

TRANSCRIPT OF RECORD

SIXTH COURT OF THE UNITED STATES

COMING —— JUNE 1861

No. —— 61.

WILLIS SMITH AND CO. V. SMITH,
APPELLANT.

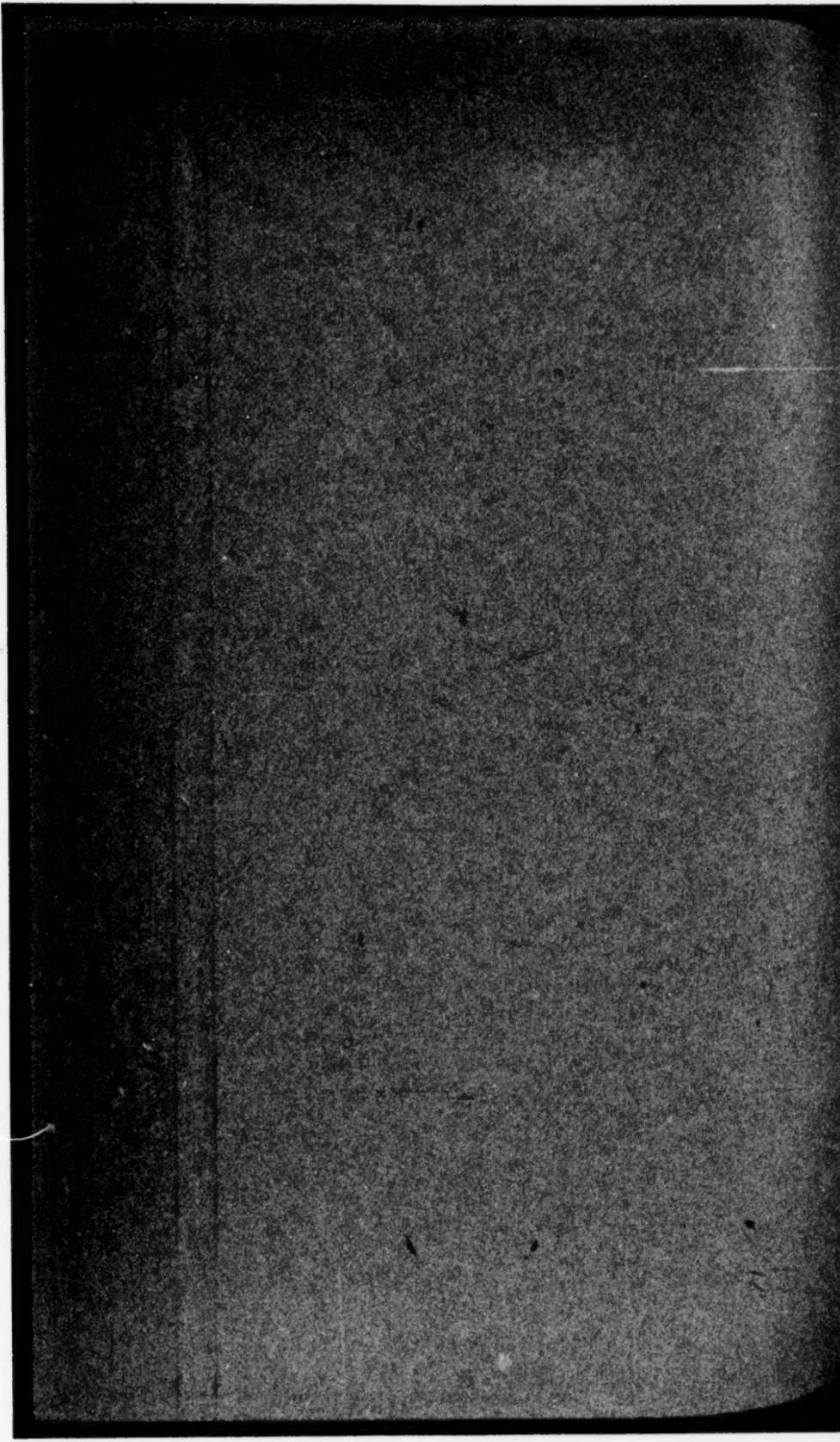
JAMES B. HAMILTON ET AL. AND HUMPHREY HAMILTON, JR., ADMINISTRATORS OF THE ESTATE OF HUMPHREY B. HAMILTON, DECEASED.

APPEAL FROM THE FEDERAL COURT OF THE DISTRICT OF ——

——, ——

WEDNESDAY, AUGUST 4, 1861.

(31,296)



(21,293)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 228.

EAGLE MINING AND IMPROVEMENT COMPANY,
APPELLANT,

vs.

MARY R. HAMILTON ET AL. AND HUMPHREY B. HAMILTON, JR., ADMINISTRATOR OF THE ESTATE OF HUMPHREY B. HAMILTON, DECEASED.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO.

INDEX.

	Original.	Print
Caption	1	1
Transcript from the district court of the fifth judicial district and county of Lincoln, New Mexico.....	2	1
Complaint (No. 1444).....	2	1
Exhibit A—Deed, Mrs. Agnes Carpenter to H. B. Hamilton, April 15, 1901	5	3
B—Deed, C. C. Parsons <i>et ux.</i> to H. B. Hamilton, March 4, 1902.....	8	5
Answer (No. 1444).....	12	7
Exhibit A—Agreement between E. S. Parsons and H. B. Hamilton, April 10, 1893.....	18	11
Replication (No. 1444).....	20	12
Order to consolidate, &c.....	23	14
Report of examiner	24	15
Memorandum opinion.....	27	17
Exceptions to examiner's report by Eagle Mining and Improvement Company.....	30	19

INDEX.

	Original.	Print
Exceptions to examiner's report by Mary R. Hamilton <i>et al.</i>	33	21
Motion for rehearing	35	22
Order overruling motion for rehearing	38	24
Judgment and decree	39	24
Complaint (No. 1539)	48	29
Amended answer (No. 1539)	55	34
Reply (No. 1539)	63	39
Affidavit of W. H. Winter as to notice to take testimony	67	41
Order of W. H. Winter, referee	68	42
Testimony of Mary R. Hamilton	69	43
James H. Parker	82	51
Fenwick B. Hamilton	96	60
R. C. Sturgeon	98	61
John Franklin	102	63
W. A. Hawkins	107	66
R. C. Sturgeon (recalled)	115	71
Offers of Exhibits F and G	117	72
Testimony of Berdie M. Scanlon	118	73
Testimony of Mary R. Hamilton (recalled)	122	75
Offers of exhibits	123	76
Testimony of Mary R. Hamilton (recalled)	125	77
Offer of Exhibit O	126	78
Testimony of A. B. Fall	126	78
Report of referee	133	82
Exhibit A—Deed, H. B. Hamilton <i>et ux.</i> to Eagle Mining and Improvement Co., March —, 1902	137	84
B—Agreement of H. B. Hamilton, March 27, 1902	140	86
E—Proceedings of stockholders of Eagle Mining and Improvement Co., May 28, 1902	140	86
Amended articles of incorporation of Eagle Mining and Improvement Co.	144	88
F—Deed, C. C. Parsons <i>et ux.</i> and H. B. Hamilton, March 4, 1902	150	92
G—Deed, Mrs. Agnes Carpenter and H. B. Hamilton, April 5, 1901	153	94
H—Articles of incorporation of Eagle Mining and Improvement Company	156	96
I—By-laws of the Eagle Mining and Improvement Company	161	99
J—Letter to J. W. Raynolds, July 20, 1901	161	99
J—Letter of J. W. Raynolds, July 20, 1901	162	100
J—Letter of J. W. Raynolds, August 9, 1901	163	100
J—Letter to J. W. Raynolds, August 15, 1901	164	101
J—Letter of J. W. Raynolds, August 19, 1901	165	101
J—Letter of J. W. Raynolds, September 26, 1901	166	102
J—Letter of J. W. Raynolds, June 5, 1902	167	103
K—Letter to R. C. Sturgeon, September 26, 1902	167	103
K—Letter to R. C. Sturgeon, October 22, 1902	169	104
K—Letter to R. C. Sturgeon, November 14, 1902	172	106
K—Letter to R. C. Sturgeon, November 21, 1902	174	107
K—Letter from R. C. Sturgeon, December 13, 1902	178	109
K—Letter of Clark, Fall, Hawkins & Franklin, December 2, 1902	179	110

INDEX.

111

	Original.	Print
Exhibit K—Letter to R. C. Sturgeon, December 23, 1902 . . .	180	110
K—Letter of R. C. Sturgeon, January 3, 1903.	181	111
K—Letter to R. C. Sturgeon, January 3, 1903.	182	112
K—Letter of R. C. Sturgeon, January 12, 1903.	183	112
K—Letter to R. C. Sturgeon, January 16, 1903.	185	113
K—Letter to R. C. Sturgeon, January 30, 1903.	187	114
K—Letter to R. C. Sturgeon, February 6, 1903.	188	115
K—Letter to R. C. Sturgeon, February 9, 1903.	190	116
K—Letter of R. C. Sturgeon, February 12, 1903.	191	117
K—Letter to R. C. Sturgeon, February 17, 1903.	192	117
K—Letter to R. C. Sturgeon, February 20, 1903.	194	118
K—Letter of R. C. Sturgeon, February 21, 1903	196	120
K—Letter of R. C. Sturgeon, February 26, 1903.	197	120
K—Letter to R. C. Sturgeon, March 5, 1903.	200	122
K—Letter to R. C. Sturgeon, March 7, 1903.	201	122
K—Letter to R. C. Sturgeon, March 24, 1903.	203	123
K—Letter to R. C. Sturgeon, March 25, 1903.	204	124
K—Telegram of R. C. Sturgeon, March 30, 1903. . . .	204	124
Letter to R. C. Sturgeon, March 30, 1903.	205	124
K—Letter to R. C. Sturgeon, April 4, 1903.	206	125
K—Letter to R. C. Sturgeon, April 8, 1903.	207	126
K—Letter from R. C. Sturgeon, April 19, 1903. . . .	209	127
K—Letter to R. C. Sturgeon, April 20, 1903.	210	128
K—Letter to R. C. Sturgeon, April 28, 1903.	211	128
Letter from R. C. Sturgeon, May 4, 1903.	212	128
K—Letter to R. C. Sturgeon, May 13, 1903.	212	129
K—Letter to R. C. Sturgeon, May 15, 1903	213	129
K—Telegram of R. C. Sturgeon, June 1, 1903. . . .	215	130
Letter to R. C. Sturgeon, June 19, 1903.	215	130
K—Letter of R. C. Sturgeon, June 23, 1903.	216	131
K—Letter to R. C. Sturgeon, June 26, 1903.	218	132
K—Letter to R. C. Sturgeon, June 26, 1903.	219	133
Letter to R. C. Sturgeon, June 27, 1903.	220	133
L—Letter, Rice to Hamilton, June 24, 1903.	221	134
L—Letter, Hamilton to Rice, June 20, 1903.	222	134
Telegram, Rice to Hamilton, June 22, 1903. . . .	223	135
L—Letter, Rice to Hamilton, June 8, 1903.	223	135
L—Letter, Rice to Hamilton, May 20, 1903.	224	135
L—Letter, Hamilton to Rice, May 18, 1903.	224	136
L—Letter, Hamilton to Rice, April 8, 1901.	226	137
Letter, Rice to Hamilton, June 1, 1901.	227	137
Telegram, Rice to Hamilton, June 17, 1901. . . .	228	138
Letter, Rice to Hamilton, June 24, 1901	228	138
L—Telegram, Rice to Hamilton, July 25, 1901. . . .	228	138
L—Letter, Rice to Hamilton, August 6, 1901. . . .	229	138
L—Letter, Hamilton to Rice, August 9, 1901. . . .	229	139
L—Letter, Hamilton to Rice, August 12, 1901. . . .	230	139
L—Letter, Rice to Hamilton, August 15, 1901. . . .	232	140
L—Letter, Rice to Hamilton, September 12, 1901. .	232	140
L—Letter, Rice to Hamilton, September 16, 1901. .	233	141
L—Letter, Rice to Hamilton, September 19, 1901. .	233	141
L—Letter, Rice to Hamilton, September 26, 1901. .	234	141

INDEX.

	Original.	Print
Exhibit L —Letter, Hamilton to Rice, October 7, 1901.....	234	142
L—Letter, Rice to Hamilton, October 10, 1901.....	235	142
L—Letter, Rice to Hamilton, November 2, 1901..	235	142
L—Letter, Rice to Hamilton, February 18, 1902..	236	143
Letter, Rice to Hamilton, February 11, 1903..	237	143
L—Letter, Hamilton to Rice, February 11, 1903..	238	144
L—Letter, Rice to Hamilton, February 14, 1903..	239	144
L—Letter, Hamilton to Rice, February 19, 1903..	239	145
L—Letter, Rice to Hamilton, February 27, 1903..	241	146
L—Letter, Rice to Hamilton, March 7, 1903.....	242	146
L—Letter, Hamilton to Rice, March 9, 1903.....	242	146
L—Letter, Hamilton to Rice, March 26, 1903.....	243	147
L—Letter, Hamilton to Rice, March 28, 1903.....	244	147
Letter, Rice to Hamilton, March 9, 1903.....	245	148
L—Letter, Hamilton to Rice, April 11, 1903.....	245	148
L—Letter, Rice to Hamilton, April 30, 1903.....	247	149
L—Letter, Hamilton to Rice, April 14, 1903.....	247	149
L—Letter, Rice to Hamilton, April 15, 1903.....	248	150
L—Letter, Rice to Hamilton, April 17, 1903.....	249	150
L—Letter, Rice to Hamilton, April 19, 1903.....	249	150
L—Letter, Hamilton to Rice, April 20, 1903.....	250	151
L—Letter, Hamilton to Rice, April 27, 1903.....	251	151
L—Letter, Hamilton to Rice, April 28, 1903.....	252	152
L—Letter, Rice to Hamilton, August 29, 1903.....	252	152
L—Letter, Hamilton to Rice, May 2, 1903.....	253	152
L—Letter, Hamilton to Rice, May 14, 1903.....	253	153
L—Letter, Rice to Hamilton, May 15, 1903.....	255	154
M —Letter, Hamilton to Tilden, July 5, 1902.....	256	154
M—Letter, Hamilton to Tilden, August 11, —.....	257	155
M—Letter, Hamilton to Tilden, August 25, 1903...	259	156
M—Letter, Hamilton to Tilden, November 11, 1903.	260	157
M—Letter, Hamilton to Tilden, November 17, 1903.	262	158
M—Letter, Hamilton to Tilden, December 10, 1903.	264	159
M—Letter, Hamilton to Tilden, December 20, 1902.	266	160
M—Letter, Tilden to Hamilton, February 12, 1903.	268	161
M—Letter, Hamilton to Tilden, February 19, 1903.	269	162
M—Letter, Hamilton to Tilden, April 11, 1903....	271	163
M—Letter, Tilden to Hamilton, May 11, 1903....	274	164
M—Letter, Hamilton to Tilden, May 14, 1903....	275	165
M—Letter, Tilden to Hamilton, May 18, 1903....	277	166
M—Letter, Hamilton to Tilden, May 21, 1903....	277	167
M—Letter, Tilden to Hamilton, May 26, 1903	278	167
M—Letter, Hamilton to Tilden, June 19, 1903....	279	167
M—Letter, Tilden to Hamilton, June 23, 1903....	280	168
Letter, Hamilton to Tilden, June 27, 1903....	282	169
N —Letter, Hamilton to George, July 26, 1901.....	284	170
N—Letter, George to Hamilton, December 13, 1902.	286	171
N—Letter, Hamilton to George, December 16, 1902.	287	172
N—Letter, George to Hamilton, December 20, 1902.	289	173
N—Letter, Hamilton to George, January 17, 1903..	290	174
O —Agreement between E. S. Parsons and H. B.		
Hamilton, April 10, 1893	291	174

INDEX.

V

	Original.	Print
Testimony taken before referee.....	293	176
Testimony of Humphrey B. Hamilton.....	294	176
John M. Rice.....	301	181
R. C. Sturgeon.....	349	211
J. M. Rice (recalled).....	352	213
J. S. Tilden.....	353	213
I. L. Webber.....	371	225
Robert C. Dryden.....	375	227
J. M. Rice (recalled).....	383	232
Referee's certificate.....	388	236
Exhibit A—Check, Rice to Hamilton, February 18, 1902.....	390	237
B—Check, Rice to Hamilton, May 17, 1902.....	391	238
C—Check, Rice to Hamilton, June 30, 1902.....	391	238
D—Check, Rice to Hamilton, July 29, 1902.....	391	238
E—Check, Rice to Hamilton, April 25, 1903.....	392	238
F—Tax deed, April 20, 1903.....	392	239
G—Tax deed, April 18, 1903.....	394	240
H—Tax deed, April 20, 1903.....	397	242
I—Letter, Hamilton to Rice, April 14, 1903.....	399	243
J—Letter, Hamilton to Rice, March 14, 1901.....	400	244
K—By-laws (not set out).....	401	244
L—Letter, Hamilton to Tilden, March 13, 1902.....	401	245
M—Letter, Hamilton to Tilden, June 13, 1902.....	403	245
N—Letter, Hamilton to Tilden, September 12, 1902.....	405	247
O—Letter, Hamilton to Tilden, November 26, 1902.....	406	247
P—Letter, Hamilton to Tilden, December 23, 1902.....	407	248
Q—Letter, Hamilton to Tilden, April 11, 1903.....	408	248
R—Letter, Hamilton to Tilden, August 25, 1902.....	411	250
S—Letter, Hamilton to Tilden, July 5, 1902.....	412	251
T—Letter, Hamilton to Tilden, November 17, 1902.....	413	251
U—Letter, Hamilton to Tilden, December 10, 1902.....	414	252
V—Letter, Hamilton to Tilden, December 20, 1902.....	417	254
Præcipe for commission to take testimony.....	419	255
Commission to take testimony.....	420	255
Deposition of Ira P. Wetmore.....	421	256
Præcipe for transcript of record.....	428	260
Judge's certificate to bill of exceptions.....	430	262
Clerk's certificate to transcript of record.....	430	262
Citation.....	432	262
Assignment of errors.....	433	263
Suggestion of diminution and motion for certiorari.....	435	265
Stipulation for addition to record.....	438	267
Order on motion for certiorari.....	439	268
Argument and submission.....	440	268
Decree.....	440	269
Motion for rehearing.....	443	270
Motion to amend and affirm.....	445	272
Order on motion to amend, &c.....	446	273
Order denying rehearing.....	447	273
Order fixing bond on appeal.....	448	274
Motion for appeal.....	449	275
Order allowing appeal.....	450	275

	Original.	Print
Supersedeas bond.....	450	276
Opinion.....	455	279
Clerk's certificate to transcript.....	461	283
Petition to Justice Moody for allowance of supersedeas under section 1007, R. S.....	463	284
Citation.....	466	286
Supersedeas bond.....	467	286
Writ of supersedeas.....	470	289
Clerk's certificate to additional transcript.....	473	290

1 Be it remembered, that heretofore, on to wit, on the 19th
 day of November, in the year of our Lord one thousand nine
 hundred and six, there was filed in the office of the Clerk of the
 Supreme Court of the Territory of New Mexico, a transcript of
 record in certain causes therein pending, entitled, The Eagle Mining
 & Improvement Company, appellant, vs. Mary R. Hamilton et al.,
 appellees, and H. B. Hamilton, Jr., Adm., etc., et al., vs. Eagle Min-
 ing and Improvement Company, appellant, which said transcript
 of record in the above entitled causes, was and is in words and figures,
 following to wit:

2 Be it remembered that heretofore, to-wit: On the fourth
 day of August in the year of our Lord one thousand nine
 hundred and three, there was filed in the office of the clerk of the
 Fifth Judicial District of the Territory of New Mexico, within and
 for the County of Lincoln, a complaint, which said complaint is in
 the words and figures following, to-wit:

In the District Court of the Fifth Judicial District, Territory of New
Mexico, County of Lincoln.

THE EAGLE MINING AND IMPROVEMENT COMPANY, Plaintiff,
vs.
MARY R. HAMILTON et als., Defendants.

Complaint.

The complainant a corporation organized under the *the* laws of
New Mexico, and doing business in the County of Lincoln, in said
territory, complaining of Mary R. Hamilton, H. B. Hamilton, Jr.,
Fenwick Hamilton and Lulu Driscoll, complains and shows to the
court that heretofore, to-wit: On the 15th day of April, A. D. 1901,
complainant purchased from Agnes Carpenter an unmarried woman,
an undivided one-sixth interest, and on the 4th day of March, A. D.
1902, from C. C. Parsons and Allie Parsons, his wife, an undivided
two-sixths interest in and to the following described mining prop-
erty and real estate, claims and lodes, and their appurtenances,
situated in the Bonito Mining District and Territory of New Mexico,
to-wit: The Hopeful Lode Mining Claim and mill site, being desig-
nated by mineral certificate No. 365 and designated by the Surveyor
General as lots 652 A and 652 B, embracing a portion of Township
10, South of Range 11 East, New Mexico Meridian, said mining
claim being the same property patented by the government of
3 the United States to R. C. Parsons by patent issued on August
 3rd, 1892, No. 21,806 and filed for record in the Recorder's
Office of said Lincoln County and duly recorded in book "D" page
522, of the records of the Probate Clerk and ex-officio recorder of
said county. That the complainant paid for said three-sixths interest
in said property the sum of \$5,500 00 lawful money of the United
States as shown by certain drafts and vouchers now in possession of

complainant, and that at the request of complainant the said above named grantors, executed and delivered their said deeds to said property, to one H. B. Hamilton, as trustee, for the use and benefit of complainant.

That the said trustee accepted said trust and caused said deeds to be recorded in the Record of Deeds, Book "U" on pages 114, 115, 116 and 117, in the Recorder's Office of said County and Territory, and agreed with complainant, both before and after the making of said deeds to the said trustee, to execute and deliver his deed to said property to complainant at such time as complainant might thereafter request; a copy of said deeds to said trustee is hereto attached and made a part of this complaint and marked exhibits "A" and "B."

Complainant further shows to the Court that the said trustee departed this life on the 29th day of June A. D. 1903, without executing and delivering his deed to said property to complainant; that at the time of his death the defendant Mary R. Hamilton was his wife, and H. B. Hamilton Jr., and Fenwick Hamilton and Lu^b. Driscoll were his only living heirs, the last three named of whom being his children, and all of whom are over the age of twenty-one years; that said defendants have been informed and are well aware that said deeds were held by the said trustee in trust and for the use and benefit of complainant, and since the death of said trustee

complainant has made frequent demands of the defendants
4 to carry out the objects and purposes of said trust, and to execute and deliver to complainant a deed to said property as above described, as the heirs of said trustee, but said defendants have refused and still refuse to comply with complainant's most reasonable requests.

Wherefore, the premises considered, and forasmuch as your complainant is without remedy in the premises, except in a Court of equity, it prays that said defendants may be required to make full and direct answer herein, but not under oath, oath being hereby waived; that the Court adjudge and decree H. B. Hamilton to have been the trustee for the use and benefit of complainant as to the said three-sixths interest in the above described property; that the defendants herein, as the heirs of said trustee, hold the title to said property in trust for the use and benefit of complainant; that the complainant is the *cestui que* trust herein and entitled to the ownership in fee of said interest; and that the Court further adjudge and decree that the defendants, and each of them, *and that they* be ordered to, execute and deliver to complainant a good and valid deed to the said three-sixths interest in said described property as the trustees thereof, and that in the event any of the defendants be not within the jurisdiction of the Court upon the final hearing hereof, that such defendants be ordered and declared by the Court removed as trustees and that some suitable person within the jurisdiction of the Court be appointed by the Court as a substitute and in their stead to execute and deliver, under the order of the Court, a good and valid deed to the complainant, and that the title in and to said three-sixths interest in said property be by the Court ordered, adjudged and decreed to be vested in complainant, and that the Court grant to the

complainant its usual process in chancery, that the defendants
5 and each of them may be required to be and appear before
this Court at a time and place named by the Court to make
answer herein, and for such other relief as may seem meet and
proper in the premises.

(Signed)

GEO. W. PRICHARD,
Attorney for Complainant.

TERRITORY OF NEW MEXICO,
County of Lincoln, ss:

John M. Rice, being duly sworn, states; that he is the agent and
general manager of the above named complainant; that he has read
over the foregoing complaint and knows the contents thereof; that
the same is true to the best of his knowledge and belief, except as
to matters therein stated on information, and as to those matters he
believes them to be true.

EAGLE MINING & IMPROVEMENT COMPANY,
By JOHN M. RICE, *Gen'l Man'g'r.*

Subscribed and sworn to before me this 30th day of July A. D.
1903.

[SEAL.]

EUGENE L. STEWART,
Notary Public.

EXHIBIT "A."

Mining Deed.

This Indenture made the 15th day of April A. D. 1901, between
Mrs. Agnes Carpenter, widow, of Sumner, Iowa, the party of the
first part, and H. B. Hamilton of the City and County of El Paso,
and the State of Texas, party of the second part:

Witnesseth, that the said party of the first part for and in con-
sideration of the sum of Two Thousand Five Hundred Dollars
(\$2,500.00) lawful money of the United States, to her in hand paid
by the said party of the second part, the receipt of which is hereby
6 acknowledged, has granted, bargained, sold, remised, released,
conveyed and confirmed, and by these presents does grant,
bargain, sell, release, remise, convey and confirm unto the
said party of the second part, and to his successors, heirs and assigns
forever all of my right in the following described mine and mining
property, mining grounds, claims and lodes and their appurtenances,
situated in the Bonito Mining District, County of Lincoln and Ter-
ritory of New Mexico, to-wit: all my right title and interest, being
an undivided one-sixth interest (1/6) in and to all of that certain
mine or mining claim known and called the Hopeful Lode mining
claim and mill site, situated in the Bonito Mining District, County
of Lincoln and Territory of New Mexico, and being designated by
mineral certificate No. 365, and designated by the Surveyor General
as Lots 652 A and 652 B, embracing a portion of township ten (10)
South of range eleven (11) east New Mexico Meridian, which said

mining claim is the same property patented by the Government of the United States to R. C. Parsons by patent issued by the Government of the United States on August 3rd, 1892, and filed for record in the Recorder's Office of Lincoln County, and duly recorded in book "D" and page 522 of the records of the Probate Clerk and Recorder of said County, and to which record reference is hereby made for a full and complete description of said mining claim and it being hereby intended to convey all the interest I have in said mine, acquired by inheritance as one of the heirs of the said R. C. Parsons, together with all the dips, spurs and angles and all the metals, ores, gold, silver and copper bearing quartz rock and earth therein, and all the rights and privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, 7 property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part of, in or to the said premises, and every part and parcel thereof, with the appurtenances.

To have and to hold, all and singular the above mentioned — described premises, together with the privileges and appurtenances thereto incident unto the said party of the second part, his successors, heirs and assigns forever. And the said party of the first part, and her heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances unto the said party of the second part, his successors, heirs and assigns against the said party of the first part and her heirs (save and except the United States) lawfully claiming or to claim the *sum* or any part thereof shall and will warrant and forever defend.

In witness whereof the said party of the first — has hereunto set her hand and seal at Sumner, Iowa, the day and year first above written.

AGNES PARSONS.

Signed and sealed in the presence of:

MRS. E. A. WISMER.
C. G. CARPENTER.

(I. R. Stamps, \$2.50.)

STATE OF IOWA,
County of Bremer:

On this 15th day of April, A. D. 1901, before me the undersigned a notary public within and for said County of Bremer, State of Iowa, personally appeared Mrs. Agnes Carpenter, widow, to me known to be the person described in and who executed the foregoing instrument, and acknowledge to me that she executed the same as 8 her free act and deed and for the purposes and consideration therein expressed.

In witness whereof I have hereunto set my hand and affixed my seal of office the day and year last above written.

[N. P. SEAL.]

JOSIAH CARPENTER,
Notary Public.

Filed for record July 31st, A. D. 1902, at 1 p. m.

I. L. ANALLA, *Recorder.*

(Recorded in book "U" of deed- of record, on pages 116 and 117 inclusive.)

I, Leslie Ellis, clerk of the Probate Court and ex-officio Recorder of Lincoln county, N. M., do hereby certify that the attached copy of mining deed—Mrs. Agnes Carpenter to H. B. Hamilton—is a true and correct transcript of the original deed as shown by the records of this office.

In witness whereof I have hereunto set my hand and affixed my official seal this 31st day of July, A. D. 1902.

[Seal of the Probate Court.]

LESLIE ELLIS,
Probate Clerk.

EXHIBIT "B."

Mining Deed.

This indenture, made this 4th day of March A. D. 1902, between C. C. Parsons of the County of Jackson and State of Missouri, and Allie Parsons his wife, the party of the first part, and H. B. Hamilton of the City and County of El Paso, and the State of Texas, party of the second part:

Witnesseth, That the said party of the first part, for and in consideration of the sum of Thirty-five Hundred (\$3,500.00) 9 Dollars, lawful money of the United States to him in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, has granted, bargained, sold, remised, released, conveyed and confirmed, and by these presents does grant, bargain, sell, remise, release, convey and confirm unto the said party of the second part and to his successors, heirs and assigns forever all my interest in the following described mine and mining property, mining grounds, claims and lodes and their appurtenances, situated in the Bonito Mining District, County of Lincoln and Territory of New Mexico, to-wit:

All my right, title and interest in and to that certain mine or mining claim and mill site, known and called the Hopeful Lode Mining claim and mill site, being a one-third (1-3) interest therein, which said Hopeful Mine and mill site are located in the said Bonito Mining District, and are fully and more particularly described and designated by the field notes and the certificate of the General Land Office, known and called certificate No. 365 and known and designated by the Surveyor General as lots Numbered 652 A and 652 B,

embracing a part of township ten (10) South, Range eleven (11) east, New Mexico Meridian, and is fully described in the patent issued by the Government of the United States to R. C. Parsons, and dated August 3rd, '92, and duly filed for record and recorded in the Recorder's Office of Lincoln County, New Mexico in book "D," at page 521, and to which record reference is hereby made for a more full and complete description of the said mine. It being intended to convey all of my right, title and interest which I hold in and to the said mine and mill site, which I have acquired as one of the heirs of the said R. C. Parsons, deceased, and which I have acquired either by deed or by inheritance.

Together with all the dips, spurs and angles, and also all 10 the metals, ores, gold, silver, and copper bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances.

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances and privileges thereto incident, unto the party of the second part, his successors, heirs and assigns forever. And the said party of the first part his heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances unto the said party of the second part, his successors, heirs and assigns against the said party of the first part and his heirs, and against all and every person or persons whomsoever (save and except the United States) lawfully claiming or to claim the same or any part thereof, shall and will warrant and by these presents forever defend.

In Witness Whereof the said party of the first part has hereunto set his hand and seal at Kansas City, Missouri, the day and year first above written.

C. C. PARSONS. [SEAL.]
ALLIE PARSONS. [SEAL.]

Signed, sealed and delivered in presence of:

[I. R. Stamps 50e.]

11 STATE OF MISSOURI.
County of Jackson:

On this 4th day of March, A. D. 1892, before me, the undersigned, a notary public within and for the County of Jackson, State of Missouri, personally appeared C. C. Parsons and Allie Parsons his wife, to me known to be the persons described in and who ex-

ecuted the foregoing instrument, and acknowledged to me that they executed the same as their free act and deed and for the purposes and consideration therein expressed.

In witness whereof I have hereunto set my hand and affixed my seal of office the day and year last above written.

My Commission expires October 8th 1903.

[N. P. SEAL.]

ULYSSES TURNER,

Notary Public.

Filed for record July 31st A. D. 1902 at 1 P. M.

L. L. ANALLA, Recorder.

(Recorded in book "U" of Deed Record on page 114 and 115 inclusive.)

I, Leslie Ellis, Clerk of the Probate Court and ex-officio Recorder of the County of Lincoln, N. M., do hereby certify that the above and attached copy of mining deed—C. C. Parsons and wife to H. B. Hamilton—is a true and correct transcript of the original deed as shown by the records of this office.

In testimony whereof I have hereunto set my hand and affixed my official seal, this 28th day of July A. D. 1903.

[Seal of the Probate Court.]

LESLIE ELLIS,

*Probate Clerk and Ex-officio Recorder,
Lincoln County, N. M.*

12 Endorsed: No. 1444. District Court, Lincoln County.
The Eagle Mining and Improvement Company, Complainant, vs. Chancery, Mary R. Hamilton, et al., Def't's Complaint.

Filed August 4th 1903. John E. Griffith, Clerk By E. W. Hulbert, Deputy. G. W. Prichard, Solicitor for Complainant.

And afterwards, to-wit: on the Fifth day of May A. D. 1905, there was filed in the office of the Clerk of the Sixth Judicial District of the Territory of New Mexico, within and for the County of Lincoln, an answer, which said answer is in words and figures following to-wit:

TERRITORY OF NEW MEXICO,
County of Lincoln, as:

In the District Court of the Sixth Judicial District.

No. 1444.

THE EAGLE MINING AND IMPROVEMENT COMPANY, Plaintiff,

vs.

MARY HAMILTON, H. B. HAMILTON, JR., FENWICK HAMILTON and
LULU DRISCOLL, Defendants.

The defendants Mary R. Hamilton, H. B. Hamilton Jr., Fenwick Hamilton and Lulu Driscoll, by leave of the Court first had and ob-

tained, file this their joint and several answer and amended answer to the complaint herein:

These defendants deny that the plaintiff purchased a one-sixth interest in the Hopeful Mine and Mill-site from Agnes Carpenter, or a two-sixth interest therein from C. C. Parsons and wife as alleged in said complaint, and deny that said deeds were executed and delivered to said H. B. Hamilton merely or solely as the naked trustee for the plaintiff, and deny that the purchase and acquisition of the said interests from the said Agnes Carpenter and C. C. Parsons and wife is correctly set forth or stated in said complaint, or that

13 said interests were acquired in any other manner than hereinafter set forth.

These defendants further deny that the said H. B. Hamilton, as trustee, accepted said alleged trust, as set forth in said complaint, and deny that the said H. B. Hamilton agreed to execute and deliver his deed to said property to said plaintiff at such time as plaintiff might thereafter request, or at any time whatever except upon the payment by the plaintiff to the said H. B. Hamilton of certain sums of money and indebtedness due and owing from said plaintiff to said Hamilton.

These defendants deny that they were well aware that said deeds were held in trust solely for the use and benefit of said plaintiff, or otherwise than as security for the payment of the indebtedness due from said plaintiff to said H. B. Hamilton, as hereinafter more fully set forth; and they deny that since the death of the said H. B. Hamilton, and prior to the commencement of this suit, the plaintiff has made any demand on them to carry out the objects and purposes of said pretended trust, or to execute and deliver to said plaintiff a deed to said property. But these defendants allege that — all times since the death of the said H. B. Hamilton they have been ready and willing, and are still ready and willing to execute and deliver to said plaintiff a deed for said property upon the payment by said plaintiff of the indebtedness hereinafter set forth.

Further answering, these defendants allege the true facts to be: that early in the year 1902, and prior thereto, the said H. B. Hamilton had acquired a certain equitable claim and interest in the said Hopeful Mine and Mill-site and the mill erected upon said mill-site, under and by virtue of a certain contract and agreement entered into between the said H. B. Hamilton and one, E. S. Parsons, one of the heirs of the original patentee of the said mine and mill site, which contract was made and entered into on or about the tenth day of April A. D. 1893, whereby the said H. B. Hamilton in consideration of certain legal services rendered or to be rendered to the said E. S. Parsons in the settlement and determination of his said mine and mill site, was to receive fifteen per cent of all the entire interest of the said E. S. Parsons in and to the said mine and mill, and of the proceeds arising from the operation, disposition, rental or sale of the aforesaid mine and mill, which fifteen per cent thereby conveyed or given to the said H. B. Hamilton should be and become a lien upon the interest of the said E. S. Parsons in and to the said mine and mill; which said contract or agreement was filed for record in book six, Records of contracts and

Agreements at pages 403 and 407 of the records of Lincoln County, and a copy of which said contract or agreement is hereunto attached, marked "Exhibit A" and made a part of this answer.

That the said — E. S. Parsons in the said Hopeful Mine and mill-site was afterwards ascertained to be an undivided one sixth interest, as these defendants are informed and believe.

That early in the year 1902, the said plaintiff being desirous of acquiring the interests of the said E. S. Parsons, Agnes Carpenter and C. C. Parsons in and to said Hopeful Mining Claim and Mill-site and all other interests therein, entered into an agreement with the — H. B. Hamilton, whereby he the said H. B. Hamilton was to acquire and purchase the interests of the said Agnes Carpenter and the said C. C. Parsons, amounting in all to a three-sixths interest, and was then to sell and convey the same to plaintiff for the consideration or price of Fifteen Thousand Dollars, when said price

was paid and not before. These defendants allege upon information and belief that it was a part of said contract and

agreement between said plaintiff and said Hamilton that the said Hamilton was to waive his equitable claim or interest of fifteen per cent of the interest of the said E. S. Parsons, which the said plaintiff was then acquiring or about to acquire, so that the said one-sixth interest so acquired by plaintiff from said E. S. Parsons would be free and clear of any demand by the said Hamilton. That in pursuance of said contract or agreement the said H. B. Hamilton procured conveyances from the said Agnes Carpenter and the said C. C. Parsons and wife to himself for their said interests; the said plaintiff advancing as a part of the said purchase price of Fifteen Thousand Dollars for said three-sixths interest the sums necessary to procure said conveyances, amounting, as these defendants are informed and believe, to be either Five Thousand Dollars or Five Thousand Five Hundred Dollars. That immediately upon obtaining conveyances for said three-sixths interest the said Hamilton informed plaintiff of the fact, and offered to convey the same to plaintiff upon the payment to him by said plaintiff of the remainder of said purchase price for said interest, to-wit: The sum of Ten Thousand Dollars, or Nine Thousand Five Hundred Dollars, but plaintiff failed or neglected to pay said sum in order to procure said conveyance, and has never paid the same nor any part thereof.

Further answering, these defendants allege that the said H. B. Hamilton in his life time from the incorporation of the said plaintiff in the month of May A. D. 1901 until the death of said Hamilton on the 29th day of June A. D. 1903, acted as the general counsel and attorney for plaintiff in New Mexico and elsewhere in the matter of the organization and incorporation of the said plaintiff, in the acquisition of mining property and investigating titles thereto, in investigating and attending to all claims, demands, suits and litigation to which said plaintiff was a party or was in any wise interested and in giving legal advice and counsel to said plaintiff and its officers. That in the discharge of his duties as such general attorney and counsel the said H. B. Hamilton was called upon and did make numerous journeys at his own cost and expense,

and devoted almost all of his entire time for a period of over two years to the discharge of said duties.

These defendants allege, upon information and belief, that at the time the said H. B. Hamilton entered upon the discharge of said duties he had no specific agreement or contract with the said plaintiff as to what salary or sums he was to receive for said services, except a general understanding that he was to be paid what his services were reasonably worth. That sometime prior to his death, however, he represented to said plaintiff that his services were reasonably worth the sum of five thousand dollars per year, and that plaintiff agreed and assented that they were worth such sum per year and promised to pay the same.

These defendants further allege, upon information and belief, that at the time the said services performed by the said H. B. Hamilton, deceased, for and on behalf of the said plaintiff and as its general attorney and counsel for said period for more than two years were worth the sum of ten thousand dollars: and said plaintiff was indebted to said Hamilton in said sum over and above the amount it had agreed to pay him for the conveyance of the said three-sixths interest in the said Hopeful mine and mill site; that the said sum of ten thousand dollars, however, was subject to certain credits for divers sums advanced by said plaintiff to said Hamilton from time to time while performing said services as general attorney and

17 counsel; the dates or the amounts so advanced not being known to these defendants, but these defendants allege upon information and belief that any and all payments so made did not aggregate more than one thousand or fifteen hundred dollars. And these defendants allege that the said H. B. Hamilton at the time of his death held the legal title to said three-sixths interest in said Hopeful mine and mill site as security for the balance due him for his said services as the general attorney and counsel, and in addition to the said balance which he was to receive for the purchase price of said three-sixths interest, as in equity and good conscience he had a right to.

And these defendants hereby state that they are ready and willing to execute and deliver to plaintiff good and sufficient deed of conveyance for the aforesaid three-sixths interest in the said Hopeful Mine and Mill site upon the payment by said plaintiff to the administrator of the said H. B. Hamilton, deceased, of the full amount of the indebtedness of said plaintiff to said Hamilton at the time of his death.

(Signed)

JAMES G. FITCH,

Socorro, New Mexico, Defendants' Attorney.

(Signed) H. B. HAMILTON, JR.,
One of Defendants.

TERRITORY OF NEW MEXICO,
County of Lincoln, ss:

H. B. Hamilton Jr., being first duly sworn, on his oath states that he is one of the defendants in the above entitled cause; that he has

read the above answer by him subscribed as such defendant and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated 18 to be upon information and belief, and as to those matters he believes them to be true.

(Signed)

H. B. HAMILTON, JR.

Subscribed and sworn to before me this 5th day of May A. D. 1905.

D. J. LEAHY, *Clerk*,
By C. P. DOWNS, *Deputy*.

EXHIBIT "A."

Agreement.

This agreement made and entered into on this 10th day of April 1893, by and between E. S. Parsons of the County of Lincoln, Territory of New Mexico, party of the first part, and H. B. Hamilton, County of Socorro, Territory of New Mexico, party of the second part; Witnesseth:

That whereas the party of the first part is the owner of an undivided interest in and to all that certain mine and mining claim, known as the Hopeful Mine, which said Mine is fully described in the location Notice of said claim duly recorded in Book — Page — of the public record of Lincoln County, which said claim is further described in the records of the land office at Las Cruces, New Mexico, as surveys No. 652A and 652B, to which records reference is hereby made for a more full and complete description of the said "Hopeful Mine."

And whereas the said party of the first part is also the owner of a certain undivided interest in a certain mill and mill building, located near and used in connection with the said Hopeful Mine, which said mine and mill are located in the Bonito Mining District in the said County of Lincoln, in the said Territory of New Mexico, which said mine and mill are owned by the said party of the first part and 19 certain other parties who are the legal heirs of one R. C. Parsons, deceased;

And whereas, the said party of the first part is having some difficulty in regard to the settlement of his interest in the said mine and mill with his partners to the estate of the said R. C. Parsons, deceased, and desires to retain the said party of the second part to carry out and attend to the said business and to procure for him his interest to the said mine and mill free from any dispute and litigation. The party of the second part agrees on his part to take hold of said business for said party of the first part in conjunction with one R. U. Rogers an attorney at law of Roswell, New Mexico, and the said party of the second part in conjunction with said R. U. Rogers agrees to bring about and procure and settle all the difficulties effecting the said mine and mill, between the said party of the first part and his co-owners therein; and to procure the settlement of the estate of the said R. C. Parsons, deceased, and to

render said property from the possession and control of the Probate Judge and Sheriff of Lincoln County. And agrees to institute and prosecute all suits and litigation necessary to bring about such settlement and to fix the interest of the said party of the first part in his favor, free from litigation and dispute, so that the same may be operated or disposed of if desired; provided purchase can be obtained therefor. The party of the first part covenants and agrees to and with the said party of the second part, that for the said services he will give, grant and convey to the said party of the second part 15% of all his entire interest which he has or may have in and to the said mine and mill, hereby giving and granting to said party of the second part 15% of all the interest of the said party of the first part in and to said mine and mill of the proceeds arising from the operation, disposition, rental or sale of the said
20 mine and mill above described. And it is understood that the said 15% interest hereby conveyed or given to the said party of the second part shall be and become a lien upon the said interest of the said party of the first part in and to said mine and mill.

Witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

E. S. PARSONS. [SEAL.]
H. B. HAMILTON. [SEAL.]

Endorsed: No. 1444, Territory of New Mexico, County of Lincoln. In the District Court, Sixth Judicial District. The Eagle M. & I. Co. vs. Mary R. Hamilton, et als. Answer. Filed in my office this 5th day of May 1905. D. J. Leahy, Clerk District Court, by C. P. Downs, Deputy. James G. Fitch, Socorro, New Mexico, Attorney for Deft's.

And thereafter, to-wit: on the second day of March A. D. 1906, there was filed in the office of the Clerk of the Sixth Judicial District of the Territory of New Mexico, within and for the County of Lincoln, a replication, which said replication is in words and figures following, to wit:

In the District Court, County of Lincoln, Territory of New Mexico.

No. 1444. Replication.

THE EAGLE MINING AND IMPROVEMENT COMPANY, Plaintiff,
vs.

MARY R. HAMILTON et al., Defendants.

Now comes the plaintiff, the Eagle Mining and Improvement Company and for replication to the new matter contained in the answer of the defendants, denies that H. B. Hamilton, de-21 ceased, ever acquired any equitable interest in the property in dispute in consideration of legal service or that the said Hamilton ever acquired any lien on said property since the plaintiff

has become the owner of any interest therein. Or that he ever had any lien on said property after plaintiff became interested in the same.

Plaintiff further denies that the said Hamilton was to sell three sixths interest in said property for fifteen thousand dollars or for any other sum. It denies that the said Hamilton offered to convey said interest for the sum of Ten Thousand Dollars, or Nine Thousand and Five Hundred Dollars, and avers there was no contract between Hamilton and itself, that the said Hamilton was to convey said property for any such consideration.

Plaintiff admits that the said Hamilton acted as counsel for it for about two years, but denies that he made journeys at his own cost, or that he devoted almost all of his time for the company during said period. Plaintiff avers that whatever cost Hamilton incurred was paid by the Company, besides which other large sums of money were paid him for his services, and avers that there was a verbal contract entered into by them, which the said Hamilton was to receive for his services rendered, and to be rendered said Company, the difference between what the three-sixths interest of the said C. C. Parsons and Agnes Carpenter in said property might cost, and the sum of Fifteen Thousand Dollars, and plaintiff denies that there was any agreement by which plaintiff was to pay the said Hamilton five thousand dollars per annum for said services.

Plaintiff further denies that the services of said Hamilton were worth ten thousand dollars, denies it ever agreed to give him ten thousand dollars for the same, denies that he ever rendered the services in full that he agreed to render, denies that the payments made to said Hamilton only aggregated about Fifteen Hundred Dollars, and denies all other material allegations contained in said answer not already denied.

22 (Signed)

G. W. PRICHARD,
Attorney for Plaintiff.

TERRITORY OF NEW MEXICO,
County of Santa Fe, ss:

George W. Prichard, the attorney for the above named plaintiff being duly sworn, states that he has read over the foregoing replication and knows the contents thereof; that the same is true to the best of his knowledge and belief, except as to matters stated on information, and as to those matters he believes them to be true.

(Signed)

GEO. W. PRICHARD.

Subscribed and sworn to before me this 1st day of March A. D. 1906.

(Signed)
[N. P. SEAL.]

E. C. BURKE,
Notary Public.

My commission expires Nov. 14th, 1909.

Endorsed: No. 1444. In the District Court, County of Lincoln, Territory of New Mexico. The Eagle Mining and Improvement Company, Plaintiffs, vs. Mary R. Hamilton, et al., Defendants. Leave to file as of March 2nd, 1906, granted. E. A. Mann, Judge. Replication Geo. W. Prichard, Attorney for the plaintiff.

And on April 19th A. D. 1905 there was filed in the office of the Clerk of the Sixth Judicial District of the Territory of New Mexico within and for the County of Lincoln, an order, which said order is in words and *and* figures following, to-wit:

23 In the District Court of the Sixth Judicial District of the Territory of New Mexico, Within and for the County of Lincoln.

No. 1444.

THE EAGLE MINING AND IMPROVEMENT COMPANY
versus
MARY R. HAMILTON et al.

and

No. 1539.

H. B. HAMILTON, JR., Administrator,
versus
THE EAGLE MINING AND IMPROVEMENT COMPANY
Order.

Now comes James G. Fitch and enters his appearance on behalf of the defendants in the first of the above entitled causes, and by consent of the parties in both of said causes these causes are consolidated into one cause, to be heard and submitted together; it is further ordered that the defendants in the first of the above entitled causes have leave to file their answer, including an amended answer on behalf of the defendant H. B. Hamilton, at any time before the commencement of the taking of the evidence in said causes; it is further ordered that said causes, by consent, be referred to W. H. Winter, Esquire, with authority to take the evidence of witnesses for either party residing at or to be found in the County of El Paso, State of Texas; and that said causes also be referred to Earl Sidebottom, Esquire, to take down the evidence of all witnesses to be found in the Territory of New Mexico but such order of reference shall not preclude either party from taking the evidence of witnesses by deposition, as deemed necessary.

(Signed)

EDWARD A. MANN, Judge.

Endorsed: No. 1444-1539. District Court, Lincoln County. The Eagle Mining and Improvement Company, versus No. 1444 Mary R. Hamilton, et al. And H. B. Hamilton, Jr., adn'r versus.
24 No. 1539. The Eagle Mining and Improvement Company. Order. Filed in my office April 19th 1905. D. J. Leahy, Clerk.

And thereafter to-wit: on the Fourteenth day of June A. D. 1906 there was filed in the office of the Clerk of the Sixth Judicial Dis-

trict of the Territory of New Mexico, within and for the County of Lincoln, an Examiner's Report, which said Examiner's Report is in words and figures following, to-wit:

In the Sixth Judicial District Court of the Territory of New Mexico,
Within and for the County of Lincoln.

No. 1444.

THE EAGLE MINING AND IMPROVEMENT COMPANY, Plaintiff,
vs.

MARY R. HAMILTON et als., Defendant.

and

No. 1539.

H. B. HAMILTON, JR., Administrator, and MARY R. HAMILTON et
als, Plaintiffs,
vs.

THE EAGLE MINING AND IMPROVEMENT COMPANY, Defendant.

Consolidated Causes.

To the Honorable Edward A. Man, Associate Justice of the Supreme Court of the Territory of New Mexico, and Judge of the Sixth Judicial District Court thereof.

The undersigned, (by a memoranda of opinion made by your Honor in the above styled consolidated causes and filed in this Court on the 30th day of April 1906) was appointed by your Honor an examiner to find the amount due Judge Hamilton, deceased, less the amount paid him as late attorney for the Eagle Mining and Improvement Company, at a salary of \$5000.00 per year for the organization of the said Company, down to the time of the death of the said Hamilton.

25 Your examiner now makes this his report and findings of facts from the record evidence before him, adduced in said consolidated causes Nos. 1444 and 1539.

The record evidence shows that the Eagle Mining & Improvement Company was incorporated under the laws of the Territory August 5th, 1901; while the record discloses that Hamilton acted as the attorney for the Company previous to this date of incorporation, for how long he so acted is not clearly shown by the evidence, hence I compute his time of service as attorney, from August 5th 1901 the date of said incorporation, down to June 29th 1903, the date of his death, making a period of employment of twenty-two months and twenty-four days.

A salary of \$5,000.00 per year is at the rate of \$416.66 2/3 per month:
For twenty-two months it would be..... \$9,166.36 2/3
For twenty-four days it would be..... 353.32

Total amount due for salary..... \$9,519.99

The record evidence before me does not disclose the amount paid Hamilton for services as an attorney, however, the affidavit of Mr. Rice, filed presumably to prevent an injunction from issuing against the company, states that Hamilton was paid the sum of \$2,100.00, some of it having been paid by the Chicago office. Granting Mr. Rice's statement to be true, still there is no evidence as to what it was paid for. It cannot be assumed that this sum was paid to Hamilton as attorney fees; for the evidences discloses the fact that Hamilton received from the company's officers two drafts or checks aggregating the sum of \$680.00 for specific purposes, and that the same was paid out by him for and in the interest of the company. Then again Hamilton expended for traveling expenses while doing the company's business in making three trips to Chicago and 26 about twenty-three trips to the company's mines in Lincoln county, New Mexico, from El Paso, Texas, at least \$800.00, which said last mentioned sums of money are a part of the \$2,100.00 paid Hamilton as stated by Mr. Rice, and the aggregate of these sums, to-wit: \$1,480.00 expended by Hamilton in the company's interest, is taken from the amount paid him, leaving a charge against Hamilton of \$620.00 actually received by him as attorney fees.

Deducting the last mentioned sum of money from the \$9,519.99 due Hamilton as aforesaid as attorney fees, leaves the sum of \$8,899.99.

Therefore I find that there is due the plaintiffs from the defendant in said consolidated cases No. 1,539, after allowing all just credits and off-sets shown by the record evidence now in my possession, the sum of \$8,899.99 attorney fees earned by Judge Hamilton in his life time while in the employ of the Eagle Mining and Improvement Company as its attorney.

Dated Lincoln, N. M., June 12, 1906.

Respectfully submitted,

(Signed)

GEO. B. BARBER, *Examiner.*

Endorsed: Nos. 1444 & 1539, Consolidated. In the District Court for Lincoln County, N. M. The Eagle Mining and Improvement Company, Plaintiff, vs. Mary R. Hamilton, et als., Defendants. And H. B. Hamilton, Administrator, et als., vs. The Eagle Mining and Improvement Company, Defendant. Examiner's Report. Filed June 14th, 1906. Chas. P. Downs, Clerk. G. B. Barber, Lincoln New Mexico, Examiner.

And on the thirtieth day of April A. D. 1906, there was filed in the office of the Clerk of the Sixth Judicial District of the Territory of New Mexico, within and for the County of Lincoln, a 27 memorandum opinion, which said memorandum opinion is in words and figures following, to-wit:

In the District Court of Lincoln County, New Mexico.

No. 1444.

EAGLE M. & I. CO.
vs.
HAMILTON ET AL.

No. 1539.

HAMILTON ET AL.
vs.
EAGLE M. & I. CO.

Memorandum Opinion.

The above causes were consolidated for the purpose of this trial and a referee appointed, the testimony taken and the causes submitted to the Court on the report of the referee and argument and briefs of counsel.

The theory of the Mining Company is that Judge Hamilton was employed by it as its counsel to do certain legal work, for which he was to receive the difference between the price paid for the Parsons and Carpenter interests in the Hopeful Mine and \$15,000.00 in full of all services, both in securing these interests and performing all the legal work in perfecting the titles to the Company's claims, owned by it at the time of the alleged contract, which sum proved to be \$9,500.00, and that Hamilton, at the time of his death, held these titles in his own name merely for convenience, or in other words, that there was a resulting trust in its favor which it seeks to enforce.

On the other hand the Hamilton heirs claim that Hamilton held the title in his own name by virtue of an expressed trust, whereby he was to receive the \$9,500 upon the execution of the deed to the Eagle Company, and that the deed from Parsons and Carpenter were made to him as security for such sum, which was not due him as attorney's fees, but for his services in securing these interests, and to reimburse him for the surrender of an agreement 28 which he had with Parsons for a commission on the sale of his interest, and that there is due him besides, as attorney's fees the reasonable value of his services to the company as its general attorney, which they claim is \$5,000 per year, less the amount which has been paid.

The questions thus raised are largely questions of fact, as the law of resulting and express trusts is well settled. If Hamilton merely held the title for convenience, the consideration being advanced by the company, there was a resulting trust in the company's favor, regardless of an agreement to that effect.

15 Am. & Eng. Enc. of Law, 1134.

1 Perry on Trusts, Sec. 124.

Olcott vs. Bynum, 17 Wall., 44.

In fact this is the universal rule where these facts alone exist and further citations are unnecessary. But if there was an agreement between the parties that Hamilton was to hold the title as security for a sum due him, then it was an express trust and, if evidenced by a writing signed by the party to be charged with the trust so that to take it out of the statute of frauds may be enforced.

After carefully reading all the testimony offered, hearing the argument of counsel and examining the authorities cited, I am of the opinion that there was an express trust as claimed by the Hamilton heirs, and that the correspondence of the parties, the letters of Hamilton to the company in which he expressly declares such trust, their replies in which they recognize it, clearly establishes the same by such writings as would take it out of the operation of the statute of frauds.

It seems to be well settled that letters of this character are sufficient writings for that purpose.

1 Perry on Trusts, Sec. 82 and citations.

Urann vs. Coates, 109 Mass. 581.

29 Steers vs. Steers, 5 Jones Ch. 1.

It is true that the Company claims a special contract for services with Mr. Rice, the manager or superintendent of the Company, and Mr. Rice testifies to that effect, but the recognition of Hamilton's claim to an interest in the Hopeful, outside of his attorney's fees, and the fact that the officers of the Company recognized his claim of \$5,000, per year as reasonable in their letters, seems to conclusively dispose of the claim of an agreement as to fees between Rice and Hamilton.

That Mr. Rice knew of Hamilton's claim appears by the letters written him by Mr. Hamilton and in his replies he nowhere disputes the justice of such claims or denies its existence, nor does he mention a contract with him as to fees. It may well be doubted whether Rice could testify to such an agreement with the deceased in a controversy between his estate and the Company in which he is interested and the same may be said of the only corroborating witness, but even if he can and the agreement was as he says, he was not under the by-laws of the company, authorized to employ a general attorney (and as such Mr. Hamilton was advertised and held out by the company) and it certainly cannot be claimed that the Company ratified a contract of which its President and other Managing Officers were profoundly ignorant until after they had recognized and approved his claims, both to an interest in the Hopeful and the reasonableness of his fees.

I conclude, therefore, that Hamilton had an interest in the Hopeful Mine of \$9,500, and that he is entitled to the relief sought to that extent and that he is entitled to a judgment against the Company for \$5,000, per year from the organization of the Company until the date of his death, less the amount actually paid him and decree will be entered to that effect and Geo. B. Barber, Esq.,
30 is appointed an Examiner to find the amount due and report the same to the Court with all convenient speed.

Dated Alamogordo, New Mexico, this 30th day of April, 1906.

(Signed)

EDWARD A. MANN, Judge.

Endorsed: District Court, Lincoln County. Eagle M. & I. Co. vs. Hamilton et al. No. 1444. Hamilton et al. vs. Eagle M. & I. Co. No. 1539. Memorandum opinion. Filed April 30th, 1906. Chas. P. Downs, Clerk.

And thereafter, towit: on the Twenty-second day of June A. D. 1906. There was filed in the office of the Clerk of the Sixth Judicial District of the Territory of New Mexico within and for the County of Lincoln, exceptions to examiner's report, which said exceptions to examiner's report is in words and figures following, to-wit:

In the District Court of the Sixth Judicial District in and for the County of Lincoln, Territory of New Mexico.

No. 1444.

THE EAGLE MINING AND IMPROVEMENT COMPANY, Plaintiff,
vs.
MARY R. HAMILTON et als., Defendants.

No. 1539.

H. B. HAMILTON, JR., Adm'r, et als., Plaintiff,
vs.
THE EAGLE MINING AND IMPROVEMENT COMPANY, Defendant.

Exceptions to Examiner's Report.

Now comes the above named the Eagle Mining and Improvement Company and excepts to the report of the examiner herein on the following grounds:

First Exception. For that the said Examiner found that there was no evidence to show what the \$2,100 paid to the said 31 Hamilton, deceased, was paid for.

Second Exception. For that the said Examiner found that the sum of \$680.00 was paid out by the said Hamilton in the interest of the Eagle Mining and Improvement Company, whereas there is no evidence in the cause that such was the fact.

Third Exception. For that said Examiner found that the said Hamilton made about twenty-three trips to the Company's mines in Lincoln County and on these trips expended at least \$800.00, whereas there is no proof in the cause of any such expenditure of money by the said Hamilton.

Fourth Exception. For that said Examiner found that the aggregate expenses of the said Hamilton amounted to \$1,480, whereas there is no proof in the cause of any such expenditures of money by the said Hamilton.

Fifth Exception. For that the said Mary Hamilton and other Hamilton heirs do not ask in either of the above named suits for a judgment against the said Eagle Mining and Improvement Com-

pany for money expended in making trips to the company's mines, nor is there any proof of any amount expended by the said Hamilton, or that the said company did not pay any and all expenses incurred in making any such trips.

Sixth Exception. For that the said examiner had no authority, under the order of this court, to find or ascertain anything concerning the expenses of the said Hamilton while acting as an attorney of said company, but was appointed to find the amount due the said heirs at the rate of \$5,000 per year as attorney's fees, 32 less the amount already paid the said Hamilton by the said company.

Seventh Exception. For that the examiner found there is due the said Hamilton heirs for attorney's fees the sum of \$8,899.99, and whereas there is no proof in the cause sustaining any such findings.

All of such findings the said Eagle Mining and Improvement Company insists are against the law, the evidence and the order of the court; wherefore said company excepts to each and every finding of said examiner herein.

(Signed) G. W. PRICHARD,
Attorney for the Eagle Mining and Improvement Company.

Endorsed: Nos. 1444-1539. In the District Court, Lincoln County. The Eagle Mining and Improvement Company, plaintiff, vs. Mary R. Hamilton et al., defendants. H. B. Hamilton, Jr., et al., plaintiffs, vs. The Eagle Mining and Improvement Company, defendants. Exceptions to examiner's report. Filed June 22, 1906. Chas. P. Downs, Clerk. G. W. Prichard, Att'y for Co.

And thereafter, to-wit: On the Twenty-eighth day of June A. D. 1906, there was filed in the office of the Clerk of the Sixth Judicial District of the Territory of New Mexico, within and for the County of Lincoln, Exceptions to Examiner's Report by Mary R. Hamilton, et al., which said exception is in words and figures following, to-wit:

33 TERRITORY OF NEW MEXICO,
County of Lincoln, etc.

In the District Court of the Sixth Judicial District.

No. 1444.

THE EAGLE MINING AND IMPROVEMENT COMPANY, Plaintiff,
vs.

MARY R. HAMILTON et als., Defendants.

No. 1539.

HUMPHREY B. HAMILTON, Jr., as Administrator of the Estate of
Humphrey B. Hamilton, Deceased; Mary R. Hamilton, Humphrey
B. Hamilton, Jr., Fenwick Hamilton and Lulu Driscoll,
Plaintiffs,

vs.

THE EAGLE MINING AND IMPROVEMENT COMPANY, Defendants.

Exceptions to Examiner's Report.

Now come the above mentioned Mary R. Hamilton, Humphrey B. Hamilton, Fenwick Hamilton and Lulu Driscoll, and except to the report of the examiner herein on the following grounds:

First. Because said examiner has allowed salary for said H. B. Hamilton deceased, only from August 5th 1901, the date upon which the articles of incorporation of The Eagle Mining and Improvement Company were filed in the office of the Secretary of New Mexico; and said examiner has ignored the evidence in this cause showing that said H. B. Hamilton, deceased, performed services in and about the organization and incorporation of said Company for several months prior to the filing of said articles, including a trip to Chicago for the purpose of organizing said Company; and said Examiner, in particular, ignored the correspondence between 34 said Hamilton and the Secretary and President of said Company, which correspondence shows that the salary of said Hamilton was to commence on the first day of July, 1901; and the said examiner should have allowed salary of said Hamilton from said first day of July, 1901, up to the 29th day of June, 1903, a period of one year, eleven months and twenty-nine days.

Second. Because said examiner has found that the said company paid said Hamilton \$2,100.00 and has based said finding upon an ex parte affidavit of J. M. Rice, filed in these suits to prevent the issuance of an injunction; because said ex parte affidavit is not evidence in this cause; because evidence was taken in this cause as to the amount of payments made by said company to said Hamilton in his life time, for and on account of legal services, and the said evidence fails to show that more than \$350.00 was paid by said company to said Hamilton, and because no sufficient or corroborative

tive evidence has been introduced in this cause showing any other payments made by said company to said Hamilton.

(Signed)

JAMES G. FITCH,
Socorro, New Mexico,
Attorney for Mary R. Hamilton, et al.

Endorsed: No. 1444 and 1539. Territory of New Mexico, County of Lincoln. In the District Court, Sixth Judicial District. Eagle Mining and Improvement Company, vs. Mary R. Hamilton, et al. Exception to Examiner's report by Mary R. Hamilton, et al. Filed June 28th, 1906, Chas. P. Downs, Clerk. James G. Fitch, Socorro, N. M. Attorney for Mary R. Hamilton, et al.

And on the Twenty-second day of May A. D. 1906 there was filed in the office of the Clerk of the Sixth Judicial District 35 of the Territory of New Mexico, within and for the County of Lincoln, a motion for rehearing by the Eagle Mining and Improvement Company, which said motion for rehearing is in words and figures following, to-wit:

In the District Court of the Sixth Judicial District of the Territory of New Mexico, in and for the County of Lincoln.

No. 1444.

THE EAGLE MINING AND IMPROVEMENT COMPANY, Plaintiff,
vs.
HAMILTON HEIRS et al., Defendants,

and

No. 1539.

HAMILTON HEIRS et al., Plaintiffs,
vs.
THE EAGLE MINING AND IMPROVEMENT COMPANY, Defendants.

Motion for Re-Hearing.

Now on this day comes the Eagle Mining and Improvement Company by its attorney, and moves the Court a re-hearing and new trial herein on the following grounds:

First. Because the Court erred in holding that there was an express trust, as claimed by the Hamilton heirs.

Second. Because the Court erred in holding that the letters of H. B. Hamilton, deceased, constitute an express trust, and because said Company alleges it was not in the power of the said Hamilton to make himself an express trustee, independent of the acts of the Company.

Third. Because there is nothing in the letters of the Eagle Mining and Improvement Company, or any officer thereof, in which the Company recognizes that the trust was an express trust, or even tend to admit that any such trust existed.

36 Fourth. Because the Court erred in finding that the officers of the Eagle Mining and Improvement Company recognized the alleged claim of \$5,000.00 a year as a reasonable compensation for Hamilton's fees.

Fifth. Because there is not any testimony in the case showing that J. M. Rice had any knowledge that Hamilton claimed any fees for services, outside of the special contract alleged by the Company to have been executed between it and the said Hamilton; and the finding of the court to the contrary is sustained by no proof.

Sixth. Because the court erred in virtually holding that the said Rice was an incompetent witness in behalf of the Company.

Seventh. Because the court erred in holding that the said Rice, the General Manager of the Company, had no authority to employ an attorney for the Company, because the by-laws of the Company did not authorize such employment.

Eighth. Because the court erred in holding that the said Rice had no such authority under the by-laws of the Company.

Ninth. Because the court erred in holding that the Company and its officers recognized and approved the claims of the said Hamilton to an interest in the Hopeful or to any fees outside of the special contract made with the said Hamilton.

Tenth. Because the court erred in finding that the said Hamilton had an interest in the Hopeful Mine of \$9,500.00.

Eleventh. Because the court erred in finding that the said Hamilton was entitled to an additional amount of \$5,000.00 per year from the organization of the Company until his death.

37 Twelfth. Because there is no proof in the case that any such amount was ever assented to by the Company, or that the said Hamilton was employed by the year, or that he was to receive anything for his services except that agreed on in the special contract between him and the General Manager of the Company.

Thirteenth. Because the findings of the court as to the character of the trust, and the amount to be paid the said Hamilton, outside of the special contract, are based upon nothing the said Company said or did, but upon the self serving declarations of the said Hamilton, and which self serving declarations were made by the letters of the said Hamilton long after the special contract was made.

Fourteenth. Because the court erred in other particulars in the findings as will appear by other matters contained in the record.

Wherefore the said Eagle Mining and Improvement Company prays a rehearing herein.

(Signed)

G. W. PRICHARD,
*Attorney for the Eagle Mining and
Improvement Company.*

Endorsed: Nos. 1444-1539. Lincoln County District Court. Eagle Mining and Improvement Company, plaintiff, vs. Hamilton

heirs, defendants. Hamilton heirs, plaintiffs, vs. Eagle Mining and Improvement Company, defendant. Motion for rehearing. Filed in open court May 22d, 1906. Chas. P. Downs, Clerk. G. W. Prichard, Attorney for Eagle Mining and Improvement Company.

38 And thereafter, to-wit: On the 6th day of July, A. D. 1906, there was filed in the office of the clerk of the Sixth Judicial District of the Territory of New Mexico, within and for the County of Lincoln, an order overruling motion for rehearing, which said order is in words and figures following, to-wit:

In the District Court of the Sixth Judicial District of the Territory of New Mexico within and for the County of Lincoln.

No. 1444.

THE EAGLE MINING AND IMPROVEMENT COMPANY, Plaintiff,
vs.
MARY R. HAMILTON et al., Defendants.

No. 1539.

H. B. HAMILTON, Administrator, et al., Plaintiffs,
vs.
THE EAGLE MINING AND IMPROVEMENT COMPANY, Defendants.

Order.

Now, to-wit: On this Sixth day of July A. D. 1906, this cause coming on for hearing on the motion for re-hearing heretofore filed by George W. Prichard, Esquire, attorney for the Eagle Mining and Improvement Company, in each of said causes; and the Court having read the motion for re-hearing herein, and having heard argument of counsel thereon, and being now fully advised in the premises, doth over-rule said motion for re-hearing in each of said causes, to-wit: No. 1444, The Eagle Mining and Improvement Company versus Mary R. Hamilton, et al., Defendants, and No. 1539, H. B. Hamilton, Jr., Administrator, et al., versus The Eagle Mining and Improvement Company, Defendant.

It is therefore considered, ordered and adjudged by the
39 Court that the motion for rehearing in each of said causes heretofore filed by counsel for The Eagle Mining and Improvement Company herein be and the same hereby is overruled; to which said ruling of the Court said Eagle Mining and Improvement Company excepts.

Done at Alamogordo, New Mexico, this 6th day of July A. D. 1906.

(Signed)

EDWARD A. MANN,
Judge, etc.

Endorsed: Nos. 1444 & 1539. District Court, Lincoln County, The Eagle Mining and Improvement Company, Plaintiff, versus.

Mary R. Hamilton, et al. And H. B. Hamilton, Jr., Adm'r, et al., Plaintiffs, versus, The Eagle Mining and Improvement Company, Defendant. Order over-ruling motion for re-hearing. Filed July 6th, 1903. Chas. P. Downs, Clerk.

And thereafter, to-wit: On the Twenty-fourth day of August A. D. 1903, there was filed in the office of the Clerk of the Sixth Judicial District of the Territory of New Mexico, within and for the County of Lincoln, a decree and judgment, which said decree and judgment is in words and figures following, to-wit:

TERRITORY OF NEW MEXICO,
County of Lincoln, ss:

In the District Court, Sixth Judicial District.

No. 1444.

THE EAGLE MINING AND IMPROVEMENT COMPANY, Plaintiff,
vs.
MARY R. HAMILTON et als., Defendants.

No. 1539.

40 **HUMPHREY B. HAMILTON, JR., as Administrator of the Estate of Humphrey B. Hamilton, Deceased; Mary R. Hamilton, Humphrey B. Hamilton, Jr., Fenwick Hamilton, and Lulu Driscoll, Plaintiff,**
vs.
THE EAGLE MINING AND IMPROVEMENT COMPANY, Defendants.

These causes having been heretofore consolidated as one cause, and coming on to be heard on the exceptions of all parties to the report of George B. Barber, Esquire, heretofore appointed examiner to find and report the amount which was due to Humphrey B. Hamilton, deceased, from the Eagle Mining and Improvement Company; for legal services rendered by said Hamilton, as its general attorney and counsel, and the amounts of credits to which said company is entitled for payments made by said company to said Hamilton in his life time, for and on account of said legal services; and the court having heard and considered said exceptions, doth find that the same were well taken.

Wherefore, it is ordered that said exceptions be, and the same hereby are sustained, and that the said report, so far as it relates to the amount of payments made by said Company to said Hamilton, and the amounts allowed as credits to said Hamilton for traveling expenses, be and the same is hereby overruled.

And thereupon these causes coming on for final hearing upon the pleadings and the evidence heretofore taken and introduced by the respective parties, and the arguments of counsel having been heard and considered, the court doth find:

First. That the said Humphrey B. Hamilton died intestate, in the

41 County of El Paso, State of Texas, on the 29th day of June, A. D. 1903; that the said Mary B. Hamilton is the widow, and the said Humphrey B. Hamilton, Jr., Fenwick Hamilton and Lulu Driscoll are the children of the said Humphrey B. Hamilton, deceased, and as such are the heirs and distributees of his estate; that the said Humphrey B. Hamilton, Jr., was duly appointed as administrator of the said Humphrey B. Hamilton, deceased, by the probate court in and for Lincoln county, Territory of New Mexico, on the 8th day of April, A. D. 1904, and letters of administration have been duly issued to him.

Second. And the Court doth further find that the said Humphrey B. Hamilton, deceased, in his life time and on, to-wit: the 30th day of June A. D. 1902, acquired the legal title to an undivided one-half interest in and to the Hopeful Lode Mining Claim and Mill site, in the Bonito Mining District, in the County of Lincoln and Territory of New Mexico, by virtue of the delivery to him on said date of a certain deed executed by Mrs. Agnes Carpenter, whereby she sold and conveyed to him, the said Hamilton, an undivided one-sixth interest in and to said mining claim and mill site, and also by virtue of the delivery to him, the said Hamilton, on said date of a certain other deed executed by C. C. Parsons, and Allie Parsons, his wife, whereby they sold and conveyed to him, the said Hamilton, an undivided two sixth interest in and to said mining claim and mill site; that the said undivided one-half interest was acquired by said Hamilton under and in accordance with an agreement and contract

42 made between said Hamilton and the Eagle Mining and Improvement Company, whereby the said Hamilton was to negotiate for the purchase of and acquire the interests of the said Agnes Carpenter and C. C. Parsons and wife, for and in the interest of said Company; and the said Hamilton was also to surrender a certain equitable claim of lien which he claimed to have upon a certain other interest in said mining claim and mill site; that the legal title to the said interests of the said C. C. Parsons and wife and Agnes Carpenter were to be acquired and taken in the name of the said Hamilton; that the said Company was to pay and advance whatever sum or sums, not exceeding Fifteen Thousand Dollars, which it might be necessary for the said Hamilton to pay to the said Agnes Carpenter and C. C. Parsons and wife, in order to obtain the delivery of said deeds; and that the said Company in consideration of the services rendered by said Hamilton in acquiring the said interests for the said Company and of the surrender of his equitable claim or lien, agreed to pay the said Hamilton the difference between Fifteen Thousand Dollars and the sums paid to the said C. C. Parsons and wife, and Agnes Carpenter; and it was further agreed that the said Hamilton was to hold the legal title to the said undivided one-half interest so acquired, as security for the sum to be paid to him by the Company.

Third. The court doth further find that the said Hamilton paid to the said C. C. Parsons and wife, and Agnes Carpenter, sums aggregating Five Thousand, Five Hundred Dollars for their said interests, which amount was advanced by said Company to said Hamilton for such purpose, and that said Hamilton, under said

43 agreement was entitled to receive from the said Company the difference between Fifteen Thousand Dollars and the said Five Thousand Five Hundred Dollars, to-wit: the sum of Nine Thousand Five Hundred Dollars, and was entitled to hold such legal title as security until said account was paid by said Company; that the sum of Nine Thousand, Five Hundred Dollars or any part thereof, has never been paid to the said Hamilton or to his administrator by the said Company.

Fourth. The court doth further find that the said contract and agreement between the said Hamilton and the said Company was evidenced by writings duly signed, by the said Hamilton in his life time, and delivered to, accepted, and acquiesced in by the said Company.

And the court doth further find that the Eagle Mining and Improvement Company have had the possession, use and enjoyment of the said Hopeful Lode Mining Claim and Mill Site, including the one half interest so acquired by said Hamilton, since the 30th day of June A. D. 1902, and have for a portion of said period been taking and mining ore therefrom.

As a conclusion of law from the above facts, the court doth find that in his life time the said Hamilton held the said legal title to the said undivided one half interest under and express trust, which is enforceable in equity, under the terms of which he was entitled to hold said legal title until the said sum of Nine thousand five hundred dollars was paid, and upon said payment being made, was required to convey the said legal title to said company on its request; that the heirs of the said Hamilton are entitled to hold said legal title, which has devolved upon them by operation of law, until the said 44 sum of nine thousand five hundred dollars, with interest thereon at the rate of six per cent per annum from the 30th day of June A. D. 1902, together with all their costs of suit is paid to the said administrator by the said company, and that upon such payment being made, the said heirs should be required and decreed to execute and deliver good and sufficient conveyances of legal title to said company; that upon the failure of said company to pay said sum, with interest and costs, within the reasonable time to be fixed by the court, the said one half interest be sold by and further the order of the court to satisfy the said sum with interest and costs.

Fifth. And the court doth further find as a matter of fact, that the said Humphrey B. Hamilton, deceased, was retained by the said Eagle Mining and Improvement Company as its attorney general and counsellor from the date of the organization of said company on the 5th day of August, A. D. 1901, until the death of said Hamilton on the 29th day of June A. D. 1903, during all of which period said Hamilton rendered legal services and advice to and for the said company, and at its request; that there was no express contract between the said company and the said Hamilton as to the amount of compensation to be paid him by said company for said services.

And the court doth further find, as a matter of fact, that said services were reasonably worth the sum of nine thousand five hundred and nineteen and 99/100 dollars, and that said company paid

said Hamilton in his life time for and on account of said legal services, various amounts aggregating in all the sum of eleven hundred dollars, and that at the time of his death there was due and owing from said company to said Hamilton for said legal services the sum of eight thousand four hundred and nineteen and 99/100 dollars.

The Court doth further find, as a conclusion of law from the above facts, that the said Administrator Humphrey B. Hamilton, Jr., is entitled to a judgment against the Eagle Mining and Improvement Company for said sum of Eight Thousand, Four Hundred and Nineteen and 99/100 Dollars.

Wherefore it is ordered, adjudged and decreed by the Court that the Eagle Mining and Improvement Company pay to Humphrey B. Hamilton, Junior, as administrator of Humphrey B. Hamilton, deceased, the sum of Eleven Thousand Eight Hundred and Sixty-two and 33/100 Dollars, with interest thereon at the rate of six per cent per annum from this date until paid, together with all costs of suit, within three months from this date, and that concurrently with the payment of said Mary R. Hamilton, Humphrey B. Hamilton, Junior, Fenwick Hamilton and Lulu Driscoll, as the heirs of the said Humphrey B. Hamilton, deceased, do execute and deliver to the Eagle Mining and Improvement Company a good and sufficient deed of conveyance for the said undivided one-half interest in and to the Hopeful Lode Mining Claim and Mill Site, being designated by Mineral Certificate No. 365, and by Surveyor General as Lots 652A and 652B, embracing a portion of Township Ten, South of Range Eleven East of the New Mexico Meridian, said mining claim and mill site being the same property patented by Government of the United States to R. C. Parsons; by patent issued August 3rd 1892, and recorded in book "D" page 522 of the records of the Probate

Clerk and Ex-officio Recorder of the County of Lincoln.

46 Is further ordered, adjudged and decreed that upon default of said payment be said Company, within a period of three months from and after this date, the said undivided one-half interest in and to Hopeful Lode Mining Claim and Mill Site be sold by A. H. Hudspeth, Esquire, who is hereby appointed Master in Chancery for that purpose, at Public Auction to the highest bidder, at the front door of the Lincoln County Court House; that said Master give previous notice of the time and place of said sale by advertisement, for not less than four weeks, in some paper published within the said County of Lincoln; that out of the proceeds of said sale said Master pay first, all of the costs of these suits, together with the cost of advertisement and sale, and then pay to said Humphrey B. Hamilton, Junior, as administrator, the said sum of Eleven Thousand Eight Hundred and Sixty-two and 23/100 Dollars, with six per cent interest thereon from this date until the day of sale, or so much thereof as can be paid out of the proceeds of said sale, that he bring the surplus, if any, into Court, or in case of deficiency, that he report the amount of said deficiency to the Court.

It is further ordered that said Master be allowed the same fees and commissions as are allowed by Law to Sheriffs on the sale of

real estate under execution at Law; that said Master make his report to the Court with all convenient speed, and execute a good and sufficient deed of conveyance to the purchaser at such sale, when approved and confirmed by the Court.

It is also considered by the Court that the said Humphrey B. Hamilton Junior, as administrator, do have and recover of and from the Eagle Mining and Improvement Company the sum of Eight

47 Thousand Four Hundred and Nineteen and 99/100 Dollars, together with his costs herein to be taxed, and that execution issue therefor.

And the said Eagle Mining and Improvement Co., then and there excepted to paragraphs second, third, fourth, fifth, sixth and seventh of said decree and to each finding of fact in which the Court finds the said Company is indebted to the said Humphrey B. Hamilton Jr., et al., and asked that these exceptions be entered of record, which was accordingly done and the said Company having prayed for an appeal from the said judgment herein to the Supreme Court of the Territory, the same was duly granted by the Court. The appeal or supercedeas bond herein is fixed at the sum of Twenty-five Thousand Dollars.

Dated at Cloudcroft, New Mexico, in said District, this 22nd day of August 1903.

(Signed)

EDWARD A. MANN,
Associate Justice, etc.

Endorsed: No. 1444, No. 1539. District Court, Lincoln County, Eagle Mining and Improvement Company, vs. Mary R. Hamilton, et al. Humphrey B. Hamilton, Jr., et al., vs. Eagle Mining and Improvement Co. Decree and Judgment. Filed August 24th 1906. Chas. P. Downs, Clerk.

And to-wit: on the Seventeenth day of November A. D. 1904, there was filed in the office of the Clerk of the Sixth Judicial District of the Territory of New Mexico, within and for the County of Lincoln, a complaint, which said complaint is in words and figures following, to-wit:

48 TERRITORY OF NEW MEXICO,
| County of Lincoln, ss:

In the District Court of the Sixth Judicial District.

No. 1539.

HUMPHREY B. HAMILTON, JR., as Administrator of the Estate of Humphrey B. Hamilton, Deceased; Mary R. Hamilton, Humphrey B. Hamilton, Jr., Fenwick Hamilton and Lulu Driscoll, Plaintiffs.

vs.

THE EAGLE MINING AND IMPROVEMENT COMPANY, Defendants.

The plaintiffs complain of defendant and allege—
That on, to-wit: the 29th day of June A. D. 1903, Humphrey

B. Hamilton died intestate in the County of El Paso, State of Texas. That the plaintiff Mary R. Hamilton, is the widow, and the other plaintiffs herein are the children of said Humphrey B. Hamilton, and that the said plaintiffs are the only heirs and distributees of the estate of the said Humphrey B. Hamilton, deceased. That on the 8th day of April, A. D. 1904 the said plaintiff, Humphrey B. Hamilton, Jr., was duly appointed administrator of all and singular the goods and chattels, rights and credits which were of the said Humphrey B. Hamilton, deceased, at the time of his death, by the Probate Court within and for the County of Lincoln and the Territory of New Mexico, and that on said date letters of administration to the said Humphrey B. Hamilton, Jr., were issued by and under the seal of said Probate Court. That the defendant is a corporation organized and doing business under the laws of the Territory of New Mexico.

That for more than two years next prior to his death the said Humphrey B. Hamilton acted as the attorney and general 49 counsel for the defendant in New Mexico and elsewhere in the matter of the organization and incorporation of said defendant company, in the acquisition and purchase of mining property, in the prosecution and defense of numerous suits by and against the company, and in giving advice and counsel upon all legal questions to said company and its officers; and that the said Humphrey B. Hamilton for the period of more than two years next preceding his death, at the request of said defendant, devoted nearly all his entire time to the business of said defendant and made numerous journeys and incurred considerable expense for and on behalf of said defendant. The said defendant in the year 1901, and prior thereto, was desirous of acquiring by purchase the Hopeful Lode Mining Claim and Mill-site, situated in the Bonito Mining District, County of Lincoln and Territory of New Mexico, a patented mining claim and mill-site designated by the Surveyor General as lots numbered 552A and 652B, embracing a portion of Township Ten, South of Range 11 East of New Mexico Meridian, for which patent was issued by the Government of the United States to one R. C. Parsons, on August 3rd A. D. 1892, and which patent is recorded in Book "D" at page 522 of the records of said Lincoln County. That prior to that time the said Humphrey B. Hamilton had acted as the attorney at law for several of the heirs of the original patentee of said mining claim and mill-site in looking after and protecting their interests therein as such heirs and in attending to certain suits and proceedings connected with said interests. That he had not been paid for said services in money but had, as these plaintiffs are informed and believe, some agreement or understanding with said heirs or some of them, whereby he was to receive for compensation for his services some interest or 50 interests in said mining claim and mill-site or some proportion of the purchase price therefor in case of a sale of said property. That the said defendant employed and retained the said Humphrey B. Hamilton to acquire in its *in-interest* the title to said property, and to negotiate for the purchase thereof with the said heirs, or some

of them; and it was agreed between the said defendant and the said Humphrey B. Hamilton, as these plaintiffs are informed and believe, that he, the said Humphrey B. Hamilton was to receive for the performance of such service and for the relinquishment of any equitable right or claim that he might have upon or against said mining claim and mill-site for services rendered to said heirs, the sum of Ten Thousand Dollars; and that he should acquire the legal title from some of said heirs to said property in his own name, and that he should hold said legal title as security for the payment of said sum of Ten Thousand Dollars, and all other sums of money which said defendant was then or might thereafter become indebted to him, the said Humphrey B. Hamilton, before the transferance of said legal title to it; and it was further agreed between said defendant and said Humphrey B. Hamilton, as these plaintiffs are informed and believe, that said defendant should advance such sum or sums of money as might be necessary to obtain deeds of conveyance from said heirs to the said Humphrey B. Hamilton. Plaintiffs further allege that in pursuance of said agreement and understanding said Humphrey B. Hamilton did afterwards, to-wit: On the 30th day of June, A. D. 1902, obtain the delivery of a certain deed executed by Agnes Carpenter, one of the aforesaid heirs, whereby Mrs. Agnes Carpenter sold and conveyed to him, the said H. B. Hamilton, an undivided one-sixth interest in and to said Hopeful Lode Mining Claim and Mill-site, which said deed bears date the 15th day of April, 51 A. D. 1901, and which is recorded in book "U" of deeds on page 116 of the records of said Lincoln county. And the said Humphrey B. Hamilton on the said 30th day of June, A. D. 1902, obtained the delivery of a certain other deed executed by C. C. Parsons and Allie Parsons, his wife, and the said C. C. Parsons being one of the aforesaid heirs, whereby the said C. C. Parsons and Allie Parsons, his wife, sold and conveyed to him the said Humphrey B. Hamilton all their right, title and interest, to-wit: a one-third interest in and to said Hopeful Mining Claim and Mill-site, which said deed bears date the 4th day of March, A. D. 1902, and which is recorded in book "U" of deeds on page 114 of the records of Lincoln county. That by virtue of said deeds the legal title to an undivided one-half interest in said Hopeful Mine and Mill-site was vested in said Humphrey B. Hamilton, and was held by him as security for the payment of said sum of ten thousand dollars and such other sum or sums of money which the said defendant then owed, or might thereafter become indebted to the said Humphrey B. Hamilton. Affiant further states that the services rendered by Humphrey B. Hamilton to the defendant, aside from the negotiations and purchases of and for the title and interest in said Hopeful Mine and Mill-site, and the surrender of his equitable claims or demands therein were reasonably worth the sum of ten thousand dollars; making the total indebtedness of the defendant to the said Humphrey B. Hamilton at the time of his death the sum of twenty thousand dollars, and for the payment of which he held the legal title to the said undivided one-half interest in said Hopeful Mine and Mill-site as security until his death, and that upon

his said death said legal title became vested in these plaintiffs, as his only heirs and distributees.

Plaintiffs further state that the said defendant did not pay 52 to the said Humphrey B. Hamilton in his life time, or to these plaintiffs, or any of them, the said sum or sums of money, for which said legal title was held as security, though plaintiffs admit that some small payments have been made by said defendant to said Humphrey B. Hamilton in his life time on account of his general services as the attorney and counsellor for said defendant, or for expenses incurred by him; that the amount, date and nature of any such payment or payments is unknown to these plaintiffs, and they therefore require strict proof of the same.

Plaintiffs further state that they are ready and willing to execute good and sufficient deed or deeds of conveyance to said defendant for said undivided one-half interest in said Hopeful Mining Claim and Mill-site upon the payment by said defendant to the said Humphrey B. Hamilton, Jr., as administrator, of the indebtedness for which said one-half interest is held as security, together with legal interest thereon; that said defendant has failed and refused to pay said indebtedness.

Plaintiffs further allege upon information and belief that the said defendant is now in possession of said Hopeful Mine and Mill-site and is claiming and pretending that it is the owner of the same and all interests therein; that it is now engaged in mining and taking the valuable ores from said Hopeful Mining claim and is threatening to continue to take, mine, mill and sell and dispose of said ores, without accounting to plaintiffs for the same or any part thereof; that the taking and mining of said ores tends to, and is depreciating and lessening the value of said mining claim, and if persisted in for any length of time will render said mining claim, and the one-half interest held by these plaintiffs as security, of little or no value. That said half interest held by these plaintiffs is scant security for the indebtedness so secured. That said 53 defendant corporation is now insolvent and unable to pay its debts.

Wherefore plaintiffs pray that an account may be taken by and under the direction of this court to determine the amount of the indebtedness of the said defendant to the said Humphrey B. Hamilton in his life time, and the amount for which the legal title to a one-half interest in said Hopeful Mine and Mill-site was taken and held by said Humphrey B. Hamilton; that the said defendant be ordered and decreed to pay said amount or amounts, with legal interest thereon, to the said Humphrey B. Hamilton, Jr., as administrator, together with all costs of this suit, by a short day to be fixed by this Court; that upon said payment being made as aforesaid the legal title to said one-half interest in said mining claim and mill-site be transferred to and vested in said defendant in such manner as the Court may direct; these plaintiffs hereby offering to execute such deed or deeds of conveyance as may be necessary or ordered by the Court; that in default of said payment being made within the time fixed by this Court, the said undivided one-half interest in said

Hopeful Mine and Mill-site, so held by these plaintiffs as aforesaid, be sold by or under the direction of the Court; that upon said sale being made the said defendant, and any and all persons claiming by, through or under it be forever, barred and foreclosed from any equitable interest, demand, claim or equity of redemption in said undivided one-half interest; that out of the proceeds of such sale there be paid all the costs and expenses of this suit and that there then be paid to the said Humphrey B. Hamilton, Jr., as administrator, the amount of said indebtedness for which said one-half interest is held as security, with legal interest thereon; that in case said undivided one-half interest in said premises shall not sell for sufficient to pay all of said costs, interest and indebtedness, the said Humphrey B. Hamilton, Jr., as administrator, have and recover to and from the said defendant the amount of the deficiency; that the said defendant, its servants, agents and employés be temporarily restrained and enjoined by restraining order or writ of injunction issued out of this Court, from taking, mining, milling, selling or disposing of any of the ores from said Hopeful Mining Claim, and that the plaintiffs have such other and further relief in the premises as may be just and equitable.

HUMPHREY B. HAMILTON, JR.,
One of Plaintiffs.

(Signed) JAMES G. FITCH,
Socorro, New Mexico,
Attorney for Plaintiffs.

TERRITORY OF NEW MEXICO,
County of Lincoln, ss.:

Humphrey B. Hamilton, Jr., being first duly sworn, on his oath states, that he is one of the plaintiffs in the above entitled cause; that he has read the above complaint by him subscribed and knows the contents thereof, and that the same is true of his own knowledge, except as — those matters which are therein stated to be upon information and belief, and that as to those matters he believes them to be true.

(Signed) HUMPHREY B. HAMILTON, JR.

Subscribed and sworn to before me this 15th day of November
A. D. 1904.

[N. P. SEAL.]

LESLIE ELLIS,
Probate Clerk, Lincoln County.

Endorsed: No. 1539. Territory of New Mexico, County of Lincoln, District Court. Humphrey B. Hamilton, Jr., et al. vs. The Eagle Mining and Improvement Company. Complaint. Filed in my office this 17th day of November, 1904. D. J. Leahy, Clerk District Court, By C. P. Downs, Deputy. James G. Fitch, Socorro, N. M., Attorney for Plaintiffs.

And thereafter, to-wit: On the seventeenth day of April, A. D. 1905, there was filed in the office of the clerk of the Sixth Judicial District of the Territory of New Mexico, within and for the County

of Lincoln, an amended answer, which said amended answer is in words and figures following, to-wit:

In the District Court of the Sixth Judicial District of the Territory of New Mexico within and for the County of Lincoln.

No. 1539.

H. B. HAMILTON, Administrator, et al.

vs.

THE EAGLE MINING AND IMPROVEMENT COMPANY.

Amended Answer.

Now comes the above named defendant, The Eagle Mining and Improvement Company, leave of the court having been had and obtained, amends its answer herein and further answering says:

That it admits that on, to wit: The 29th day of June, A. D. 1903, Humphrey B. Hamilton died in the County of El Paso, State of Texas, and that Mary R. Hamilton, one of the above named plaintiffs, is his widow, and that the other plaintiffs herein are the children of said Hamilton; but this defendant is not advised whether the said Hamilton died intestate or not, nor is it advised whether the above named plaintiffs are the only heirs of the said Hamilton, and therefore denies both of said allegations; this defendant is not advised whether Humphrey B. Hamilton, Jr., was duly appointed administrator of the goods and chattels of the said Hamilton, deceased, by the probate court, within and for the County of Lincoln, Territory of New Mexico, and therefore demands proof of the same.

56 This defendant admits that for a certain period of time, but not for two years as alleged in the complaint, the said Humphrey B. Hamilton acted as an attorney and general counsel for the defendant in New Mexico, in the matter of the organization and incorporation of said company, in the acquisition and purchase of mining property; but it denies that the said Hamilton acted for the defendant in the prosecution and defense of numerous suits by and against said Company and it denies that the said Hamilton, for the period of more than two years next preceding his death, devoted nearly all his entire time to the business of said defendant, and defendant denies that he made numerous journeys or incurred any expense on his own account for and on behalf of the defendant.

Defendant, further answering, says, that there was a verbal contract entered into between the said Hamilton and defendant, by and under which the said Hamilton was to perform certain legal work: that among other services the said Hamilton was to perform was that of securing titles from certain heirs to an interest in the Hopeful Lode Mining Claim and Mill-site, situate in the Bonito Mining District, County of Lincoln and Territory of New Mexico, which mining claim and mill site is designated by Surveyor General as Lots No. 652A and 652B, embracing a portion of Township 10, South of Range 11 East of New Mexico Meridian, on which a

patent was issued to one R. C. Parsons August 3rd 1892, which patent was duly recorded in the records of said Lincoln County; that the said Hamilton was to perform other services in the matter of securing title for the defendant from the Government of the

United States to various mining claims, and to perform all of
57 the legal work required in and about the securing of said
titles, and in the prosecution and defense of any cases in
which this defendant might become interested in the Courts of the
Territory of New Mexico, and that for such services he was to re-
ceive the sum of Nine Thousand Five Hundred Dollars, on which
amount there has been paid to the said Hamilton the sum of Twenty-
one Hundred Dollars. This defendant is not advised as to whether
the said Humphrey B. Hamilton, prior to said contract with this
defendant, acted as the attorney at law for several of the heirs of
the original patentee of said mining claim and mill site, for looking
after protecting their interests therein, or for any other purpose,
and therefore defendant denies that any such services were rendered;
defendant denies that there was any understanding or agreement be-
tween said heirs and said Hamilton, whereby he was to receive for
compensation for said services any interest in said mining claim
and mill, in case of the sale of the same, but the defendant avers
the truth to be that one E. S. Parsons, from whom this defendant
has received a deed to one-sixth interest in said property, and which
deed this defendant now holds was indebted to the said Hamilton,
as defendant is informed and believes, in the sum of about one thou-
sand dollars; that when this defendant purchased the said interest
it agreed with the said Hamilton, through R. M. Rice, general
manager of this defendant, and the said Parsons, to assume the
payment of said sum of one thousand dollars; that the said Hamil-
ton, at the time, and at no time thereafter, made any claim of any
interest in said property.

Defendant admits that it secured the services of the said Hamil-
ton to acquire for it certain titles to the said property and negotiate
for the purchase thereof with the said heirs, not including the said
E. S. Parsons aforesaid; but it denies that the said Hamilton
58 was to receive for the performance of such services, or for
the relinquishment of any right or claim that he might have,
or claim to have, against said mining claim or mill-site, the sum of
ten thousand dollars, as alleged in said complaint; but avers the
truth to be that the said one thousand dollars that the said Hamil-
ton was to receive from the said Parsons was to be considered a part
of the consideration to be paid to the said Hamilton for the services
to be rendered in securing said titles and representing the defendant
in its business in the courts, under the contract above referred to;
and defendant denies that there was any other contract between the
said Hamilton and itself whatsoever. Defendant denies that the
said Hamilton, under said contract, was to hold the legal title to said
property as security for the payment of the sum of ten thousand
dollars, or any other sum, or that there was any understanding
that the said Hamilton was to hold the title of said property in his
name until the payment of any such sum of money which might

thereafter become due from this defendant, and before the transference of such title to defendant. Defendant admits that it advanced large sums of money to be paid to C. C. Parsons and Mrs. Agnes Carpenter for their interest in the said Hopeful Mining Claim and Mill-site, and that the said sums of money were placed in the hands of the said Hamilton to purchase said interests for defendant; that the said Hamilton was allowed to take the titles to said interest in his own name, as trustee of the defendant, at the request of said Hamilton, who represented that by so doing said interest could be acquired for less money than would be required if said interest was deeded direct to defendant, and that the consideration price for said interest from said heirs, not to include the interest of the said E. S. Parsons above referred to, was paid by defendant to said heirs, amounting to the total sum of five thousand five hundred dollars, that in the purchase of said interest the said Hamilton did not furnish any of said purchase money.

Defendant admits that in pursuance of the agreement and understanding referred to the said Hamilton afterwards, to-wit: on the 30th day of June A. D. 1902; obtained the delivery of a deed, executed by the said Agnes Carpenter, one of the heirs aforesaid, whereby the said heir sold and conveyed to him, for the use and benefit of this defendant, an undivided one-sixth interest in and to said property, which deed bears date April 15th A. D. 1901, and which was duly recorded in the records of said Lincoln County; and defendant further admits that on the 30th day of June A. D. 1902, the said Hamilton obtained the delivery of a certain other deed, executed by the said C. C. Parsons and Allie Parsons his wife, the said C. C. Parsons being one of the heirs aforesaid, whereby the said C. C. Parsons and wife sold and conveyed to the said Hamilton, for the use and benefit of this defendant, all their right, title and interest in said property, which said deed bears date March 4th A. D. 1902, and which deed is also recorded in the records of deeds in said County of Lincoln; but defendant absolutely denies that by virtue of said deeds the legal title to an undivided one-half interest in said property was to be held by said Hamilton as security for the payment of any sum of money whatsoever, which the defendant then owed, or might thereafter become indebted to the said Hamilton. Defendant denies that the services rendered by the said Hamilton were worth the sum of Ten Thousand Dollars; but avers the truth to be that the sum of Twenty-one Hundred Dollars, paid him as above set forth, was a full and ample compensation for all the legal work that was done by the said Hamilton under said contract; defendant denies that its indebtedness to the said Hamilton

60 amounted to the sum of Twenty Thousand Dollars, or any other sum beyond that which has been paid by defendant; and denies that there was any understanding between said Hamilton and defendant that he was to receive any compensation from defendant, save and except the compensation referred to in the contract above mentioned; and defendant denies that said Hamilton held the legal title to said property, or any portion thereof, as se-

curity, or that there ever was any understanding or agreement between the said Hamilton and this defendant that he could or would hold said title as security for the payment of any sum to him whatsoever by this defendant.

Defendant admits that it did not pay to the said Hamilton in his life time, or since his death has not paid to the plaintiffs, or any of them, the sum of Twenty Thousand Dollars; but it states the truth to be, that during the life time of the said Hamilton, defendant paid him divers sums of money on divers occasions for services rendered by him, amounting in aggregate to Twenty-one Hundred Dollars, as above stated, and that such payments have fully liquidated all legal claims and demands of the said Hamilton against this defendant; that although the said Hamilton agreed with defendant to represent defendant as its attorney in its legal business in the Courts of the Territory of New Mexico, and in securing patents to various mining claims in the County of Lincoln, yet in truth he did not appear in a single case in the Courts in which defendant was interested, nor did he during his life time, procure the patent to a single mining claim for the defendant; that defendant has been compelled, since the death of said Hamilton, to employ other attorney- at a large expense to itself, to represent defendant in its legal business, and in other matters in which the said defendant is interested.

61 Defendant admits that it is now in possession of the property above mentioned, and avers that, being the direct owner of a large interest in said property, and further being the cestui que trust of another large interest therein, held by the said Hamilton in his life time as the trustee of said property, it claims the right to the possession thereof, and the further right to mine and take ore from said property if it chooses so to do, and further states that it is the absolute owner of the whole of said property by virtue of certain tax deeds made to it on the 18th and 20th days of April 1906. Defendant admits that it is now engaged in mining to some extent, in removing ore from said Hopeful Mining Claim, and states that it has put upon said mining claim a large quantity of machinery for the purpose of operating said mine, and is at this time engaged in putting other machinery thereon for said purpose, amounting to the total sum of about Forty-Five Thousand Dollars; that the work that the defendant is engaged in, in and about said mine has greatly increased the value thereof; and defendant denies that such work and such improvements upon said claim in any wise depreciates or lessens the value thereof, or that any such work will in anywise injure said claim but will be beneficial to the same, giving increased value thereto, as aforesaid.

The defendant denies that the plaintiffs herein are entitled to an accounting, as claimed by them, or that they are entitled to any relief against this defendant, as prayed for by them and further answering, defendant says: That before the death of the said Hamilton, and from the date of the deeds aforesaid to him as trustee of this defendant, it was understood and agreed by and between the said Hamilton and this defendant that the said Hamilton was to

convey said interest to this defendant at any time that defendant might call upon the said Hamilton for a deed to such interest, and that during the lifetime of the said Hamilton he never pretended to this defendant to have any interest in said property whatsoever, except as the trustee of defendant, but at all times admitted that he held the title to said property for defendant, purely as an accommodation, and under the circumstances as above set forth; that the business of procuring the title of said property, and the employment of an attorney in connection therewith, was left solely to the said J. M. Rice, the General Manager of defendant's business in said County and Territory, and that the said Hamilton well understood the same.

Defendant having answered each and every material allegation of the complaint herein prays the judgment of the court, that it may go hence without day.

(Signed)

G. W. PRICHARD,
Attorney for Defendant.

TERRITORY OF NEW MEXICO,
County of Lincoln, ss:

J. M. Rice, first being duly sworn, upon his oath deposes and says; that he is the General Manager of the Eagle Mining & Improvement Company, the defendant in the above entitled cause; that he has read over the foregoing amended answer and understands the contents thereof, and that the matters and things therein stated are true of his own knowledge, except as to those matters stated on information and belief, and as to those matters he believes them to be true.

(Signed)

J. M. RICE.

Subscribed and sworn to before me this 14th day of April A. D. 1905.

(Signed)

D. J. LEAHY,
Clerk Court.
By C. P. DOWNS, *Deputy.*

63 Endorsed: No. 1539. District Court, Lincoln County. H. B. Hamilton, Administrator, et al. versus The Eagle Mining and Improvement Company. Amended answer. Filed in open Court this 17th day of April, 1905. D. J. Leahy.

And thereafter, to-wit: On the 18th day of April, A. D. 1905, there was filed in the office of the Clerk of the Sixth Judicial District of the Territory of New Mexico, within and for the County of Lincoln, a replication to the amended answer, which replication is in words and figures following, to-wit:

Plaintiffs' Reply.

In the District Court of the Sixth Judicial District of the Territory of New Mexico within and for the County of Lincoln.

No. 1539.

H. B. HAMILTON et al.

vs.

THE EAGLE MINING AND IMPROVEMENT COMPANY.

And said plaintiffs for their reply to the amended answer herein of the defendant, deny that said Humphrey B. Hamilton, deceased, received the sum of Twenty-one Hundred Dollars, or any other sum whatever for his services in securing the title to the said Hopeful Mining Claim and Mill-site, or for any interest which he had or claimed therein, or under the said contract between the said Humphrey B. Hamilton, deceased, and the said defendant, for the purchase and acquisition of said undivided one-half interest of said Hopeful Mine and Mill-site; but these defendants allege that any payments made by the said defendant to the said Humphrey B. Hamilton, in his lifetime, were made and applied on the services rendered by the said Humphrey B. Hamilton, deceased, as the attorney and general counsel for said defendant in other matters and business of said defendant not connected with the acquisition of said undivided one-half interest. The plaintiffs further deny,

64 upon information and belief, that the said Humphrey B.

Hamilton received from said defendant the sum of Twenty-one Hundred Dollars, in any account whatever; although these plaintiffs admit that the said defendant did pay to the said Humphrey B. Hamilton, in his lifetime, at divers times, divers sums of money for his services and traveling expenses as the general attorney of said defendant, the total amount of the payments being unknown to these plaintiffs and plaintiffs call for strict proof of all payments claimed to have been made.

These plaintiffs further deny, upon information and belief, that under the contract or agreement by which the said Humphrey B. Hamilton, deceased, was to acquire the said undivided one-half interest in the Hopeful Mine and Mill-site, the said Humphrey B. Hamilton, deceased, agreed to perform other services in the acquisition or patenting of other mining claims, or to perform other legal work required in and about the securing title to other claims, or the prosecution or defense of cases in which said defendant might become interested in the Courts of the Territory of New Mexico, but these defendants allege that all such services, aside from the acquisition of said one-half interest, were performed by the said Humphrey B. Hamilton, deceased, at the instance and request of defendant's officers, and as defendant's general attorney, without any express agreement or contract as to the amount the said Humphrey B. Hamilton was to receive for his said services, at the time they were ren-

dered, and that shortly prior to his death the said Humphrey B. Hamilton, deceased, claimed and represented to the said defendant and its said officers, that his services, aside from those under the contract and agreement whereby he secured the said one-half interest in said Hopeful Mine and Mill-site, were reasonably worth the sum of ten thousand dollars, which said claim was not denied by the said company or its officers.

These plaintiffs further allege, upon information and belief, that prior to the conveyance by said E. S. Parsons to the said defendant of an undivided one-sixth interest in said Hopeful Mine and Mill-site, that the said Humphrey B. Hamilton, deceased, had an agreement with the said E. C. Parsons whereby he the said Humphrey B. Hamilton, deceased, acquired and was to receive 15% of all the interest, right and title of the said E. S. Parsons, in the said Hopeful Mine and Mill site, and of the proceeds that the said Parsons might derive from the sale thereof; and plaintiffs admit that the said defendants assumed and agreed to pay the said Hamilton the amount that was due him, or that was to become due him under his contract with said Parsons; but plaintiffs are unable to state said amount because they are not advised as to the price obtained by the said E. S. Parsons, from the said defendant for said interest, but defendants allege, upon information and belief, that the amount which the said Humphrey B. Hamilton, deceased, was entitled to receive under his agreement with said Parsons largely exceeded \$1,000.00.

Plaintiffs deny, upon information and belief, that the machinery alleged by the defendants to be now placed upon said mine is of the value of forty-five thousand dollars; deny that said defendant is the legal owner of said machinery, but allege, upon information and belief, that the same is purchased in the name of and consigned to one Anderson; and deny that the work now being performed by the said defendant on said mine has increased, or will increase the value thereof. And plaintiffs deny that defendant is the owner of the whole of said property by virtue of any tax deeds.

66 Plaintiffs also deny that it was understood and agreed between the said Hamilton and the said defendant, that the said Hamilton was to convey his said interest to the said defendant at any time said defendant might call upon said Hamilton for a deed to said interest, and without paying the amount due from said defendant to said Hamilton; and that during the lifetime of the said Hamilton he never pretended to have any interest in said property, except as trustee of said defendant; deny that he ever admitted that he held the legal title to said property for said defendant purely as an accommodation; deny that his employment as an attorney was left solely to the said J. M. Rice; but these plaintiffs allege that the said Hamilton in his lifetime frequently stated to the other officers of the said defendant Company, that he held said legal title as security for the amount due him from said defendant, and urged said defendant to pay off said indebtedness and secure and obtain the legal title to the interest held by him the said Hamilton.

(Signed)

JAMES G. FITCH,
Socorro, New Mexico, Plaintiff's Attorney.

TERRITORY OF NEW MEXICO,
County of Lincoln:

Humphrey B. Hamilton, first being duly sworn, upon his oath states: That he is one of the plaintiffs in the above styled and numbered cause; that he has read the above and foregoing reply and knows the contents thereof and the matters of facts therein contained are true and correct, except as to the matters stated upon information and belief, and as to those matters he believes them to be true.

(Signed)

HUMPHREY B. HAMILTON.

67 Subscribed and sworn to before me this 18th day of April,
A. D. 1905.

[SEAL.]

(Signed)

D. J. LEAHY, Clerk.

Endorsed: No. 1539. District Court, Lincoln County. H. B. Hamilton, Ad'm'r et al. vs. The Eagle Mining and Improvement Co. Plaintiff's Reply to Amended Answer. Filed in my office April 18th, 1905. D. J. Leahy, Clerk, by C. P. Downs, Deputy. James G. Fitch, Attorney for Plaintiff, Socorro, N. M.

In the District Court of the Sixth Judicial District of the Territory of New Mexico, Within and for the County of Lincoln.

No. 1444.

THE EAGLE MINING AND IMPROVEMENT COMPANY
vs.

MARY R. HAMILTON et al.

and

No. 1539.

H. B. HAMILTON, Jr., Administrator, et al.
vs.

THE EAGLE MINING AND IMPROVEMENT COMPANY.

W. H. Winter, being first duly sworn upon his oath deposes and says: That he is W. H. Winter, to whom was referred the above entitled and numbered causes—heretofore consolidated—with authority to take the evidence of witnesses of either party residing at or to be found in the county of El Paso, State of Texas. That after said order of reference affiant set said consolidated action for the taking of such evidence as might be offered by the parties, or either of them, at the office of affiant, on the 29th day of May, A. D. 1905, in El Paso, Texas; that on the 11th day of May, A. D. 1905, he mailed a copy of the notice of the setting of said cause for the taking of evidence on said 29th day of May, A. D. 1905, to George W. Prichard, Esq., addressed to Santa Fe, New Mexico, and at the same time mailed a copy thereof addressed to James G.

Fitch, Esq., Socorro, New Mexico: and affiant further says he will faithfully and fairly hear and examine the cause, as to all matters which were referred to him and will make a just, impartial and true report thereof according to the best of his understanding.

(Signed)

W. H. WINTER.

Subscribed and sworn to before me at El Paso, Texas, this 29th day of May, A. D. 1905.

[SEAL.]

(Signed)

J. H. COONS,

Notary Public, El Paso County, State of Texas.

In the District Court of the Sixth Judicial District of the Territory of New Mexico, Within and for the County of Lincoln.

No. 1444.

THE EAGLE MINING AND IMPROVEMENT COMPANY,
vs.

MARY R. HAMILTON et al.

and

No. 1539.

H. B. HAMILTON, Administrator; MARY R. HAMILTON et al.
vs.

THE EAGLE MINING AND IMPROVEMENT COMPANY.

The taking of testimony on the part of defendants in case No. 1444, and on the part of defendants in case No. 1539, as above entitled and numbered, before W. H. Winter one of the referees in said cases, having been set for the taking of testimony by the said W. H. Winter at his office in El Paso, El Paso County, Texas,—the said W. H. Winter acting under an Order of said Court filed in said causes on the 19th day of April A. D. 1905,—for the 29th day of May A. D. 1905 was, on said 29th day of May A. D. 1905, to 69 convenience counsel in said causes, adjourned by said referee until the 30th day of May A. D. 1905, and on the 30th day of May A. D. 1905, at Nine o'clock A. M., the hearing and taking of such testimony before said referee was begun at El Paso, El Paso County, State of Texas, at the office of and before the said W. H. Winter: there were present at the taking of such testimony, James G. Fitch, counsel on behalf of the defendants in said case No. 1444 and on behalf of the plaintiffs in said case No. 1539 and Geo. W. Pritchard, Esq., counsel on behalf of the Eagle Mining and Improvement Company, plaintiff in case No. 1444 and defendant in No. 1539 and thereafter the following testimony and following proceedings had.

(Signed)

W. H. WINTER, Referee.

MARY R. HAMILTON, being first duly sworn, deposes and testifies as follows:

Examination by JAMES G. FITCH, Esq.:

Q. State your name, age and place of residence.

A. Mary R. Hamilton, 50 years, residence El Paso, Texas.

Q. What relation were you, Mrs. Hamilton, to the late H. B. Hamilton?

A. Wife of Judge Hamilton.

Q. Do you know of a company known as the Eagle Mining & Improvement Company which is a party in these causes?

A. I do.

Q. Do you know J. M. Rice?

A. I do.

Q. Do you know his connection, if any, with the Eagle Company?

A. He is Manager.

70 Q. How long have you known Mr. Rice and his Company?

I mean by that, when did you first become acquainted with him or know of the Company?

A. Since 1901 anyway, perhaps a little prior to that.

Q. Mrs. Hamilton, do you know anything of a deed executed by Judge Hamilton and yourself to the Eagle Mining and Improvement Company for an interest in the Hopeful Mine?

A. Yes, sir, I do.

Q. Do you know what was done with that deed. What was done with it, where it was placed?

A. In the bank, First National Bank of El Paso, Texas.

Q. Have you found that deed since Judge Hamilton's death. Where did you get it?

A. I found it in the First National Bank.

Q. If you have the deed here with you, please produce it.

(Witness produces deed.)

Q. This deed was executed by yourself and Judge Hamilton. was it?

A. Yes, sir.

Q. Mrs. Hamilton, this deed which you handed to me appears to be enclosed in an envelope with directions written on it. Do you know whose signature that is to the directions?

Col. PRICHARD: Objected to because the testimony sought is irrelevant, immaterial and incompetent, and for the reason that it does not appear in the memorandum referred to upon inspection that the Eagle Mining and Improvement Company is a party to the memoranda or have anything to do with the depositing of the deed referred to in the bank.

A. H. B. Hamilton, my husband.

71 Q. At the time you executed this deed, Mrs. Hamilton, did you understand the conditions upon which it was executed and placed in the bank in escrow.

Col. Prichard objected to this as irrelevant and incompetent, be-

cause the question calls for a conclusion of the witness and not for a fact.

A. I did.

Q. You can state briefly, Mrs. Hamilton, what those conditions were.

Col. PRICHARD objected because it is immaterial, irrelevant and incompetent, because the question does not call for an answer as to whether the Eagle Mining and Improvement Company knew of the conditions referred to or not.

A. My understanding was that Mr. Rice, as manager, had arranged with my husband that this deed should be placed in escrow until he should be paid the amount stated thereon, less a certain percent which he was to pay for some property.

Col. PRICHARD: I move to strike out the foregoing answer because it is a statement to a conclusion and not a statement of a fact known personally to the witness.

Q. Mrs. Hamilton, do you know from whom Judge Hamilton was to acquire title or procure deeds from for this interest which he was to convey to the Company.

Col. PRICHARD: Objected to as immaterial, irrelevant and incompetent.

A. I think Mrs. Carpenter was one.

Q. Do you recollect the name of anybody else.

A. I think Parsons' heirs.

Q. Mrs. Hamilton, for the purpose of refreshing your memory I will ask you to look at this deed executed by C. C. Parsons and wife to H. B. Hamilton, acknowledged March 4th, 1903, and this other deed executed by Agnes Carpenter to H. B. Hamilton and executed April 15th, 1901. After examining them, state if 72 you can tell from whom Judge Hamilton was to procure deeds for the interests which he was to convey to the Company.

Col. PRICHARD: Objected to as irrelevant, incompetent and immaterial and calling for a conclusion of the witness.

A. Judge Hamilton was to procure deeds from C. C. Parsons and wife and Mrs. Agnes Carpenter.

Q. Do you know what Judge Hamilton paid to procure these conveyances?

Col. PRICHARD: Objected to because the deeds show for themselves.

A. Twenty-five hundred to Mrs. Carpenter and thirty-five hundred to Mrs. Parsons.

Q. Do you know who advanced the money to pay these parties?

A. The Eagle Mining and Improvement Company.

Q. Mrs. Hamilton, do you know what connection Judge Hamilton had with The Eagle Mining and Improvement Company from the date of its incorporation, about the month of May, 1901, until his death in the latter part of June, 1903, if any?

Col. PRICHARD: Objected to because the question is suggestive and leading.

A. He was their attorney.

Q. Do you know, Mrs. Hamilton, approximately how much of his time, if any, was taken up with the affairs of this company in his capacity as its attorney?

Col. PRICHARD: Objected to as irrelevant, immaterial and incompetent.

A. I should say at least two-thirds of his time.

Q. For what length of time was it that he was occupied at least two thirds of his time?

A. About two years.

Q. Do you know of his making any trips or journeys as the attorney for this company?

Col. PRICHARD: Objected to as leading in form.

73 A. Yes, sir, I do.

Q. Please state, Mrs. Hamilton, whether or not Judge Hamilton, did make any journeys in the interests of this company?

Col. PRICHARD: Objected to *be* leading, as suggestive of the answer desired and because the question is assumptive of fact to which the witness has not referred.

A. Judge Hamilton made three trips to Chicago, one to Kansas City, and numerous trips to the Parsons mine in the interest of the company.

Q. About how often did he visit the mines at Parsons?

A. I should say ten or twelve times at least, though it seemed to me about once a month.

Q. Do you know, Mrs. Hamilton, whether the devotion of his time in these trips you have mentioned, had any effect on his business for other clients?

Col. PRICHARD: Objection to this question because it is immaterial what effect it may have had on his business for other clients.

A. I am sure it interfered with his business for other clients.

Q. In what way?

Col. PRICHARD: Objected to as immaterial, irrelevant and incompetent.

A. While he was away in the interest of this mining company his clients would be obliged to call for other help and in several instances he had to hand business over to other lawyers because it needed immediate attention and he could not be here to attend to it.

Q. Do you know, Mrs. Hamilton, what effect his attention to the affairs of this Company and these trips had on his general practice?

Col. PRICHARD: Objected to because it is immaterial, incompetent and irrelevant, and because it is calling for a conclusion and not for a fact.

A. I know that it interfered greatly with it and caused him to give up a great deal outside of this Company work.

Q. What was the result, if any, from a pecuniary point of view?

Col. PRICHARD: Objected to as immaterial, irrelevant, incompetent, and as not calling for a fact but a conclusion.

A. He lost a great deal of money from other sources.

Q. State whether or not his practice outside of this Company for the last two years of his life, was sufficient to enable him to provide for you?

Col. PRICHARD: Objected to because it is immaterial, irrelevant, incompetent, and because the question raises a multiplicity of grounds as to why the witness was not provided for other than by his services to the Eagle Mining and Improvement Company.

A. It was not.

(The deed and memoranda referred to in Mrs. Hamilton's evidence as deposited by Judge Hamilton in the First National Bank and thereafter found by Mrs. Hamilton, is here offered in evidence, the deed being marked "Exhibit A" and the escrow agreement "Exhibit B.")

Col. PRICHARD: We object to the introduction of deed and memoranda referred to as testimony in this case, because it is not shown that the Eagle Mining and Improvement Company are parties to the memorandum, nor is it shown that the Company was a party to depositing the deed in bank, and because the testimony is incompetent, irrelevant and immaterial.

Q. Mrs. Hamilton, will you state, after your husband's death, who, if anyone, took possession of the papers and correspondence of his office?

A. At my request, his sons took charge of Judge Hamilton's papers. Humphrey B. Hamilton, of Lincoln, N. M., and Fenwick Hamilton, of El Paso, bringing them to our home where I could look them over.

Q. Please state whether or not you found any papers or correspondence relating to the Eagle Mining and Improvement Company, or to Judge Hamilton's transactions or connections therewith?

A. I found a great many letters and papers relating to the business of The Eagle Mining and Improvement Company, evidently the last letter he wrote being one of them.

Q. Did you read these papers or made any examination of them?

A. Yes, sir.

Q. From the examination you made at that time, Mrs. Hamilton, would you be able to identify the papers if shown to you?

A. Yes sir.

Q. Please examine this package of correspondence, purporting to be between your husband and Mr. Sturgeon, commencing with the letter dated Sunday night, signed Sturgeon, and a copy of letter dated September 26th 1902, purporting to be written by your husband to Mr. Sturgeon, and ending with a copy of a letter dated June 27th 1903, purporting to be written by your husband to Sturgeon, and the numerous letters and copies of letters between those dates,

and state whether you have seen them before, and if so under what circumstances?

76 A. I have examined all these letters and papers and can testify that I found them among Judge Hamilton's papers and read them, arranging them in a separate package in connection with other papers relating to the Eagle Mining and Improvement Company.

(Papers are handed to the referee for the purpose of identification at this time, consisting of letters, signed Sturgeon or R. C. Sturgeon, dated: Sunday night, December 13th, 1902; January 3rd, 1903; February 12th, 1903; February 21st, 1903; 2-26-03; Telegram dated March 30th, 1903; letter dated April 19th, 1903; letter dated May 4th, 1903; telegram dated June 1-03; letter dated June 23rd, 1903; also carbon copies of letters purporting to be written by H. B. Hamilton to said Sturgeon, and dated Sept. 26, 1902; October 22nd, 1902; November 14th, 1902; November 21st, 1902; December 23rd, 1902; January 3rd, 1903; January 16th, 1903; January 30th, 1903; February 6th, 1903; February 9th, 1903; February 17th, 1903; February 20th, 1903; March 5th, 1903; March 7th, 1903; March 24th, 1903; March 25th, 1903; March 30th, 1903; April 4th, 1903; April 8th, 1903; April 20th, 1903; April 28th, 1903; May 13th, 1903; May 18th, 1903; June 19th, 1903; June 26th, 1903; June 26th, 1903; June 27th, 1903; and were taken charge of by the referee who marked the package with his initials.)

Q. Mrs. Hamilton look at this package purporting to be correspondence between Judge Hamilton and J. S. Tilden, and consisting of copies of letters purporting to have been written by Judge Hamilton to said Tilden, and letters written by said Tilden to Judge Hamilton, and state whether or not you have ever seen that package of papers before. If so where and when?

A. I have seen those papers before among Judge Hamilton's papers, read them immediately after Judge Hamilton's death, and placed them with the rest of the Eagle Mining and Improvement Company's papers.

77 Q. Will you state whether or not these were among the papers found in Judge Hamilton's office after his death?

A. Yes, sir; they were found among his papers.

(Papers are handed to the referee for the purpose of identification at this time consisting of carbon or letter press copies of letters purporting to be written from the office of H. B. Hamilton to Mr. J. S. Tilden dated: July 5th, 1902; 8-11; August 25th, 1902; November 11th, 1902; November 17, 1902; December 10th, 1902; December 20th, 1902; February 19th, 1903; April 11th, 1903; May 14th, 1903; May 21st, 1903; June 19th, 1903; June 27th, 1903; and letters signed by said Tilden and addressed to said Hamilton, and dated: February 12th, 1903; May 11th, 1903; May 18th, 1903; May 26th, 1903; June 23rd, 1903; and all of said letters and copies of letters were taken charge of by the referee who marked the package with his initials.)

Q. Mrs. Hamilton will you look at this package of correspondence purporting to be between Judge Hamilton and Milton George. State whether you have ever seen those papers before, and if so, when and where?

A. I have looked these papers over and can testify that they are papers found among Judge Hamilton's papers in his office after his death.

(Papers are handed to the referee for identification at this time consisting of carbon copies of letters purporting to have been written by Judge Hamilton to said Milton George, and also letters purporting to have been written by Milton George to Judge Hamilton, being the same papers identified by Mrs. Hamilton as having been found in the office of Judge Hamilton after his death. The letters purporting to have been written by Judge Hamilton being dated July 6, 1901; December 16, 1902, and January 17, 1903; and the letters purporting to have been written by Milton George
78 to Judge Hamilton bearing date '12 '13 '02, '22 '13 '02; and all of said letters and copies of letters were taken charge of by the referee who marked the package with his initials.)

Q. Mrs. Hamilton will you look at this package purporting to be correspondence between Judge Hamilton and J. M. Rice, and state whether you have ever seen those papers before, and if so, when and where?

A. I have examined these papers and find them to be papers that were among Judge Hamilton's papers in his office at the time of his death.

(Package of papers is here handed to the referee at this time for identification, consisting of carbon copies of letters purporting to have been written by Judge Hamilton to J. M. Rice, and also letters addressed to Judge Hamilton purporting to have been written by J. M. Rice, being the same papers identified by Mrs. Hamilton as having been found in the office of Judge Hamilton after his death. The letters purporting to have been written by J. M. Rice to Judge Hamilton being dated: June 24th, 1903. Telegram dated June 23; telegram dated June 22d; letter dated June 8th, 1903; May 20th, 1903; June 1st, 1901; telegram dated '6 '17, 18 1901; letter dated June 24th, 1901; telegram dated July 25th; letter dated August 6th, 1901; letter dated May 15th, 1901; letter dated September 12th, 1901; letter dated September 16th, 1901; September 19th, 1901; September 26th, 1901; October 10th, 1901; November 2nd, 1901; February 18th, 1902; February 11th, 1903; February 14th, 1903; February 27th, 1903; Mar. 7th, 1903; Mar. 9th, 1903; April 13th, 1903; April 15th, 1903; April 17th, 1903; April 19th, 1903; April 29th, 1903; and May 15th, 1903; and carbon copies of letters purporting to have been written by Judge Hamilton to said J. M. Rice dated: June 20th, 1903; May 18th, 1903; April 8th, 1901; August 9th, 1901; August 12th, 1901; October 7th, 1901; February 11th, 1903; February 19th, 1903; March 9th, 1903; March 26th, 1903; March 28th, 1903;

April 11th, 1903; April 14th, 1903; April 20th, 1903; April 27th, 1903; April 28th, 1903; May 2nd, 1903; May 14th, 1903, and all of said letters, telegrams, carbon copies of letters were taken charge of by the referee who marked the package with his initials.)

Mr. FITCH: Plaintiffs close in chief, so far as we are advised at present.

Col. PRICHARD: Assuming from the above entry that it is the purpose of counsel for plaintiff in case No. 1539 to reintroduce this witness for the purpose of further testimony in chief, we give notice that we will object to any further testimony, and will now proceed to the cross examination on the assumption that the testimony of the witness, in chief, has been exhausted.

Mr. FITCH: The gentleman's first assumption in the above speech is incorrect; that we have concluded our examination in chief for this witness so far we are advised at present, but we reserve and insist upon the right to recall this witness should it transpire from the taking of this evidence that any material point has been overlooked, or that new developments in the evidence require the examination of this witness on additional points.

Cross-examination.

By GEORGE W. PRICHARD, Esq., Counsel for the Eagle Mining & Improvement Co.:

Q. Mrs. Hamilton, were you present when the memoranda referred to in your testimony was placed in the bank?

A. No, sir, I was not.

Q. Were you present when the first deed referred to was placed in the bank?

A. No, sir.

80 Q. Were you present when either the memoranda or the deed was prepared?

A. No, sir, I was not.

Q. Do you know whether or not any of the officers of the Eagle Mining & Improvement Company, or anyone representing the Company, was present at the time that the memoranda and deed was left at the bank?

A. I do not.

Q. Mrs. Hamilton, do you know whether the Company, or anyone representing the Company, participated in the preparation of these papers, the memoranda and the deed?

A. I do not know, I only have Judge Hamilton's word for it.

Q. I believe you say, Mrs. Hamilton, that there was an understanding that Mr. Rice had arranged with your husband to place these papers in the bank. Now will you state whether you have arrived at that understanding from anything that Mr. Rice himself has said to you, or was that understanding from your husband?

A. I understood it from my husband, and after his death, Mr. Rice talked to me about the matter and he said "You have the deed" and I had the impression that he understood that it was in the bank.

Q. Did he state in that connection, Mrs. Hamilton, that he had anything to do with putting it in the bank?

A. I think not. He said that the contract made between the Company and Judge Hamilton would be carried out just the same as if he had lived.

Q. And as I understand you, that was all he said upon the subject, that the contract would be carried out which he had with Judge Hamilton?

A. I think so, as I now recall it.

Q. Mrs. Hamilton, by reference to this memoranda to
81 which I have referred, I find it bears date March 27th, 1902. Can you tell whether the deeds from C. C. Parsons and Mrs. Agnes Carpenter had been executed to Judge Hamilton prior to the date of this memoranda?

Mr. FITCH: Objected to because the deeds show for themselves what date they were executed, and the dates of the execution are admitted in the pleadings.

A. I cannot bear all these dates in mind.

Q. Do you want to say anything more than that?

A. I believe they were made prior to this time.

Q. You testified as to the consideration that was paid for these deeds by Judge Hamilton. How do you arrive at what the consideration was?

A. I read it on the back of the deed and Judge Hamilton explained the matter to me.

Q. Personally, of course, you have no knowledge of what the consideration was?

A. No, sir.

Q. You spoke of Judge Hamilton making several trips to Chicago while he was acting as the attorney for the company. Do you know who bore the expense of those trips?

A. I believe the company bore the expenses.

Q. Mrs. Hamilton, do you now recall the names of any individuals who were turned over to other lawyers with their business, in consequence of the absence of your husband?

A. I believe Mr. H. B. Grove, the real estate man, is one.

Q. Can you remember any others?

A. I don't recall the names, but I remember that one man came to the house while he was away on business.

Q. Did Judge Hamilton have his office at his residence, or down in the city?

82 A. His office was in the city, but his phone was in the residence, which caused me to know a great deal of his business while he was absent.

Redirect examination.

By J. G. FITCH, Esq., Counsel for Mary R. Hamilton et al.:

Q. Mrs. Hamilton, you stated in answer to a question, that the deeds from Mrs. Agnes Carpenter and C. C. Parsons, were executed before the deed executed by yourself and husband and placed in escrow in the bank. That is, before March 27th, 1902. Do you know

at what date they were actually delivered to your husband, or when the price was paid.

A. I do not.

Q. Mrs. Hamilton, do you remember what amounts of money were advanced by the company to pay the expenses of Judge Hamilton's trips to Chicago?

A. I do not exactly, I should have to refer to the books.

Q. Do you mean that the Company simply advanced money for his traveling expenses on these occasions?

Col. PRICHARD: Objected to as leading.

A. That is what I meant.

(Signed)

MARY R. HAMILTON.

JAMES H. PARKER, a witness on behalf of the plaintiff in No. 1539, and defendant in 1444, being first duly sworn, deposes and testifies as follows:

Examination by JAMES G. FITCH, Esq.

Q. State your name, age, residence and occupation,

A. James H. Parker, 37 years, El Paso, Texas, Mining Engineer.

Q. Are you acquainted with a certain mining claim known as the Hopeful Mining Claim, located in the Bonito Mining District, Parsons, New Mexico?

83 A. I am.

Q. Were you acquainted with Judge H. B. Hamilton during his lifetime?

A. Yes, sir.

Q. Are you acquainted with, or do you know a corporation known as the Eagle Mining and Improvement Company?

A. Yes, sir.

Q. Have you had any connection with that company, and if so, please state what that connection was?

Col. PRICHARD: Objected to as immaterial, irrelevant and incompetent.

A. Well, I have had connection with the company in as much as I am a shareholder.

Q. Do you know who were the principal officers of that Company during Judge Hamilton's life time?

A. The president, I think was Mr. Tilden, I think of Ohio. The manager was J. M. Rice; secretary and treasurer was Mr. Sturgeon. And also Judge Hamilton was the attorney, if that is an officer of the company.

Q. What was the capitalization of the company?

Col. PRICHARD: Objected to as immaterial, irrelevant and incompetent, and has nothing to do with the issues of this case.

A. At that time it was either five or ten million, I don't remember which.

Q. Do you know whether or not this Company has made any in-

vestments or spent money in trying to make investments in Lincoln County, New Mexico.

Col. PRICHARD: Objected to as incompetent, irrelevant and immaterial and has nothing to do with the issues of this case.

A. Yes, sir, they have.

Q. Can you state approximately the number of mining 84 claims they have invested in or spent money upon, and approximately the amount of money they have spent there during Judge Hamilton's lifetime?

Col. PRICHARD: Objected to as incompetent, irrelevant and immaterial and has nothing to do with the issues of this case and that the testimony offered is not the best testimony in any event.

A. I would judge about two hundred and fifty to three hundred claims, and from the financial statement of the company issued, something like three hundred thousand dollars were expended.

Q. Are you personally acquainted with any of the officers of this company; if so, please state with whom?

A. I am personally acquainted with Mr. J. M. Rice, General Manager, and Mr. Sturgeon, Secretary and Treasurer.

Q. What position does Mr. Sturgeon hold in the Company, if any, at present?

A. Mr. Sturgeon is Secretary and I believe Treasurer.

Q. Will you state if this company has any office in the east, if so, where they are?

A. The company has offices in the east, in Chicago, in the Tacoma Building.

Q. Have you ever been in those offices?

A. Yes, sir, several times.

Q. Can you state what officer of the company was most active in the direction of its affairs at the Chicago office?

Col. PRICHARD: Objected to as immaterial and calling for a conclusion.

A. Mr. Sturgeon.

Q. Mr. Parker, did you have any conversation or conversations with any of the officers of the Eagle Mining and Improvement Company with regard to Judge Hamilton's interest in or holding a title to some interest in the Hopeful Mine?

85 A. I have had conversations with Judge Hamilton and J. M. Rice.

Col. PRICHARD: We move to strike out that part of the answer which refers to Judge Hamilton.

Q. State, as nearly as you can, when and where your conversations with Mr. Rice on this subject took place.

A. I would judge about two years ago, in the Sheldon Hotel, El Paso. I had several conversations with Mr. Rice on this subject.

Q. Will you state how these conversations came to take place, or what was the occasion of your talking to him on this matter?

A. The occasion for the conversation was a deal or two between

Mr. Rice and myself in which Judge Hamilton and his interest in the Hopeful property was more or less connected.

Q. What did Mr. Rice say in these conversations with reference to Judge Hamilton's interest, or his holding the legal title to a certain interest in the Hopeful Mine?

A. Well, at the time my father had a sheriff's attachment on the Hopeful property. This attachment was procured before the Eagle Mining and Improvement Company was organized. At this time of the organization of the Company, the attachment stood in the way of acquiring title to the Hopeful property and Mr. Rice and my father E. W. Parker, agreed to allow the attachment to be dismissed, it being understood that Judge Hamilton held an interest in the Hopeful property and that money was due him for this interest and when this interest was paid for, my father would receive the sum due him.

Q. Did Mr. Rice in any of these conversations mention for what this money was due Judge Hamilton from the Company?

A. No, except in general terms by stating that Judge Hamilton was entitled to something for acquiring this property and handling certain people that were rather hard to deal with.

Q. Did he state how much was due Judge Hamilton for acquiring this property or any interest in it?

Col. PRICHARD: Objected to as leading.

A. No, sir.

Q. Was anything else stated by Mr. Rice as to money due Judge Hamilton from the Company, or money due for any other purpose or in any other manner?

A. I don't remember anything else.

Q. For the purpose of refreshing your memory, I will ask you whether anything was said by Mr. Rice in any of these conversations about money being due Judge Hamilton from the Company for his services as the general attorney or counsel for the Company, aside from the acquirement of this particular interest in the Hopeful Mine?

Col. PRICHARD: Objected to as leading and because he has already answered what he remembered of the conversations

A. As I remember it, Mr. Rice told me on several occasions that Judge Hamilton was a good man, had assisted him very materially in acquiring the titles to the Hopeful property, and that he was perfectly willing that Judge Hamilton should be paid liberally for his services rendered.

Q. What, if anything, was said by Mr. Rice in these conversations as to the conditions upon which Judge Hamilton held the legal title to his interest in the Hopeful, or as to how long he was to hold it.

A. Mr. Rice never entered into details as our conversations were general and broad.

Q. Please state whether Mr. Rice made any statements as to whether Judge Hamilton was to convey this legal interest to the company at any time, or was to hold it until he was paid what was due him.

Col. PRICHARD: Objected to because the question is leading and because of the number of questions embraced in the question.

A. Mr. Rice never stated to me when Judge Hamilton was to transfer his interest in the Hopeful property; but Judge Hamilton was to surrender this title upon the payment of certain sums for the fulfillment of certain agreements.

Q. Was there anything more stated in these conversations with Mr. Rice? If so, please state what.

A. Nothing more on the subject that I remember.

Q. How long did Judge Hamilton act as the attorney and counsel for this company, if you know?

A. I would judge between one and two years, although I don't know.

Q. Do you know whether he acted in that capacity from its first incorporation?

A. Yes, sir, he did.

Q. How long did he continue to act with reference to the date of his death?

A. As far as my knowledge goes, he acted from the organization of the company until the date of his death.

Q. Do you know whether he took any trips or went anywhere away from El Paso in pursuance of his duties as attorney for the company?

A. Judge Hamilton went to Chicago on several occasions, and also to the mining property in Lincoln County, New Mexico.

Q. How frequently did he visit the mining property in Lincoln County?

A. I am unable to state.

Q. Do you know, more or less, what proportion of Judge Hamilton's time was occupied with the affairs of the Company?

88 A. During the organization of the company quite all of his time was devoted to the affairs of the company, and more or less of his time until his death.

Q. Do you know, approximately, what proportion of his time?

A. During the organization of the company for several months at least, he devoted quite all of his time to the affairs of the company, and afterwards I frequently saw him in his office attending to the affairs of the company?

Q. Look at this paper shown you marked "Prospectus Eagle Mining and Improvement Company," and state, if you know, by whom was that issued and by whose authority.

Col. PRICHARD: Objected to because there is no evidence that there was issued, and because the witness is not the proper person to prove the fact by if it had been issued.

Question withdrawn.

Q. State whether you have received that prospectus, or a similar one.

Col. PRICHARD: Objected to as irrelevant and immaterial.

A. Never received one, but I have seen one before. Judge Hamil-

ton showed me this or another one in his office and stated this was what the company was using and sending out and I asked him to procure one for me.

Col. PRICHARD: We move to strike out the last answer for the reason it refers to statements of Judge Hamilton and is incompetent testimony in this connection.

Q. Do you know Mr. Sturgeon's signature, are you acquainted with it?

A. I have seen it several times.

Q. Would you be able to tell whether a certain signature is his or not?

89 A. I believe I would.

Col. PRICHARD: We admit the signature of R. C. Sturgeon or Sturgeon wherever it appears on any of the letters that were identified by Mrs. Mary R. Hamilton in her testimony and which were heretofore, after identification by her as being among the papers of Judge Hamilton, placed in the charge of the referee herein, and also admits the signature of J. M. Rice wherever the same appears on any of the letters which were identified by Mrs. Mary R. Hamilton in her testimony as having been found among the papers of Judge Hamilton and which were heretofore, during the taking of this testimony, placed in the hands of this referee and the same admission is made with reference to letters identified by Mrs. Mary R. Hamilton as found among the papers of Judge Hamilton, signed by Milton George and J. S. Tilden, during the time that they were officers of the Eagle Mining and Improvement Company, which were placed in the hands of the referee, and it is further admitted by the attorney for the Eagle Mining and Improvement Company, that all of the letter press or carbon copies of letters addressed to any one of the above mentioned officers, which were found among the papers of Judge Hamilton and identified by Mrs. Hamilton, were copies of letters written and addressed by Judge Hamilton to said officers.

Q. Mr. Parker, are you able to state what connection, if any, or what position, if any, Mr. Milton George had with this Company at any time?

A. I never met Mr. George and only know from the letter heads and prospectus that there is such a man connected with the company.

Q. Do you know what his connection was with the Company, by what means?

A. I think he was vice president.

Q. Is there anything more in connection with this case 90 that you know of that is material, if so, please state it?

A. Nothing more, except what Judge Hamilton told me and a copy of a letter or two he showed me in his office.

Q. Letters written to whom?

A. One in particular I know of to Mr. Tilden about two years ago.

(Witness shown the correspondence between Judge Hamilton and Mr. Tilden and asked:)

Q. Can you identify that copy?

A. There is the carbon copy of a letter which Judge Hamilton showed me which he had written to Mr. Tilden that day or the day before.

(Referring to a letter dated May 14th, 1903.)

Cross-examination.

By GEORGE W. PRICHARD, Esq., attorney for the Eagle Mining and Improvement Co.:

Q. Mr. Parker, do you remember what year it was in which you first talked to Mr. Rice about the attachment proceedings and other matters to which you have referred?

A. Why, it was about four or five years ago, and various times from that time up to and more particularly about two years ago.

Q. Were these first talks you refer to previous to the organization of the Eagle Mining and Improvement Company?

A. During the organization of the Eagle Mining and Improvement Company I did not discuss these matters as much with Mr. Rice as my father did afterwards, assuming control of my father's affairs, I did talk with Mr. Rice and that was after the organization of the company.

Q. What do you mean by during the organization of the company, and when?

91 A. I do not remember when the company was organized, but I judge about 1897, but whenever it was, I heard Mr. Rice and my father discuss these matters, these attachment proceedings and referring the whole matter to Judge Hamilton to be settled by him at such times or time as his interest was settled.

Q. Were these conversations that you refer to, or any of them, previous to the 5th of August, 1901.

A. I do not know as to that, but it was certainly about that time.

Q. When did your father leave the Territory of New Mexico?

A. I think it was four years ago this fall.

Q. Then state whether or not these conversations were previous to that time?

A. Previous to that time and by correspondence since that time.

Q. Then if the Eagle Mining and Improvement Company was organized on the 5th day of August, 1901, it was previous to the organization of that company, is that so?

A. Well, now that company may have been reorganized at that time, the company was organized before that I think.

Q. Do you mean to say that the Eagle Mining and Improvement Company was reorganized at that time or at any other time?

Mr. FITCH: We object for same reasons given in last preceding objection.

A. No, but I do mean that the par value of the stock was changed from a higher to a lower figure, either by reorganization or an amendment of the charter, I don't know which.

Q. In these conversations you had with Mr. Rice previous to the 5th day of August, 1901, in which he referred to the interest of

Judge Hamilton in the Hopeful mine, what interest did he say the judge had?

92 A. I don't think I talked with Mr. Rice regarding Mr. Hamilton's interest as far back as that date, but perhaps heard conversations between Mr. Rice and my father.

Q. Well, in regard to those conversations between Mr. Rice and your father, what did Mr. Rice say as to the interest of Judge Hamilton?

Mr. FITCH: Objected to as not proper cross-examination because the substance of conversations with witness' father and Mr. Rice were not inquired about in the direct examination.

A. Mr. Rice never stated the exact interest that Judge Hamilton held in my presence.

Q. Mr. Parker, did you know a man by the name of E. S. Parsons who lived at or near the Hopeful Mine referred to?

A. Yes, sir.

Q. Do you know whether this man Parsons at any time had any interest in the Hopeful Mine?

A. I know he claimed an interest.

Q. Do you know whether there was any relations existing between Judge Hamilton and Mr. Parsons as attorney and client in relation to the Hopeful Mine?

A. I believe there was, yes, sir.

Q. State whether or not these relations which you refer to existed prior to the 5th day of August 1901.

Mr. FITCH: Objected to as not proper cross-examination.

A. I believe they did.

Q. State whether or not Judge Hamilton had or claimed any interest in the Hopeful Mine from this man E. S. Parsons by reason of those relations?

A. It was my understanding that he did have.

Q. Can you state whether the conversations which you heard between your father and Mr. Rice in which Mr. Rice spoke of 93 the interest of Judge Hamilton in the Hopeful Mine, referred to this interest which he derived from Mr. Parsons?

Mr. FITCH: Objected to as not proper cross-examination.

A. I have heard Mr. Rice and my father discuss the history of this property time and again and cover all these points.

Q. When Mr. Rice said in your presence and in the presence of your father that Judge Hamilton was entitled to something for handling this interest as he had hard parties to deal with, did he say what that something should be?

Mr. FITCH: Objected to as not proper cross-examination because witness has not testified in direct to any conversation with witness' father.

A. Mr. Rice never mentioned the amount.

Q. When was it that Mr. Rice said, if he made any statement on

the subject, that Judge Hamilton was to surrender the title in fulfillment of a certain agreement?

A. A little over two years ago now. Prior to Judge Hamilton's death.

Q. Is that as near as you can give the time.

A. Yes, sir.

Q. Where was it?

A. In the Sheldon Hotel, in another conversation on the side walk to the east side of the hotel.

Q. Who was present besides you and Mr. Rice?

A. No one.

Q. Did he make use of any language in that conversation except that which you have stated in your direct examination?

A. Why, I think not.

Q. You speak of having been in Judge Hamilton's office when he was writing letters to the Company or to officers of the Company, state whether you know upon what subjects he was writing.

94 A. Yes, sir. I know what subject he was writing on.

Q. State what.

A. Referring to that letter that Judge Hamilton read to me explains it fully. I know in a large measure Judge Hamilton's efforts and correspondence were to the effect of procuring money from the Eagle Mining and Improvement Company that the Judge claimed was due him.

Q. Then as I understand you, the letters were personal letters of the Judge to the Company, asking for money, is that true?

Mr. FITCH: Objected to as incompetent, irrelevant and that the letters speak for themselves.

A. I don't know the Judge demanding money from the Company or in the sense that he was begging money from the Company.

Col. PRICHARD: We move to strike out the last part of the answer as not responsive to the question.

Q. Have you any personal knowledge of any contract, or the terms of any contract or agreement between the Eagle Mining and Improvement Company and Judge Hamilton in reference to the Hopeful Mine, or to the affairs of the Company?

A. I have not.

Q. Can you state Mr. Parker specifically, what Mr. Rice referred to when he spoke to you in reference to the fulfilling of a certain agreement.

A. Well, at that time the title to the Hopeful property had not been acquire- by the Eagle Mining and Improvement Company, and for some reason I was lead to believe by Mr. Rice that it was best to have Judge Hamilton acquire title in his own name and purchase the Parsons and Mrs. Carpenter's interest in the property, and that at some time the Judge was to turn this interest in to the Company

95 and receive therefor for acquiring these titles, visiting the different owners, that is Parsons and Mrs. Carpenter, and for services rendered on these mines and I judge for legal services to clear up these titles. Judge Hamilton was to turn in this title to

the Company for a compensation. Judge Hamilton was also attorney for my father, who brought suit against the John's heirs, or John's interest in the Hopeful property, and this money was to be received by my father through Judge Hamilton. I was under the impression that there was a number of similar cases to my father's in which Mr. Rice thought it would be best for Judge Hamilton to straighten out and turn a clear title over to the Company.

Col PRICHARD: We move to strike out all of the above answer which is not responsive to the question.

Q. In your last answer, are you giving the conversation of Mr. Rice, or are you giving your conclusions?

A. I am giving the purport of the conversations I have held with Mr. Rice.

Q. Will you give the exact language used by Mr. Rice in that conversation last referred to?

A. I can't state the exact language, this was two or three years ago, except that Mr. Rice did say that Judge Hamilton was a good man and I want to see him make some money.

Questions by Mr. R. C. STURGEON on behalf of the Eagle Mining and Improvement Company:

Q. Mr. Parker, were you associated in business with Judge Hamilton during any portion of the years 1901 and 1902?

A. I frequently sought Judge Hamilton's advice, but was not associated with him in any way.

Q. What was your business in 1901 and 1902?

A. Mining.

Q. Did your business keep you in the city the greater 96 portion of that time or were you absent from the city most of that time?

A. I was absent during the greater portion of those two years.

Q. Now then Mr. Parker, as you were absent from the city the greater portion of those two years, upon what do you base your testimony that quite all of the Judge's time was devoted to the affairs of the company during the time of the organization, and more or less until his death?

A. The Judge told me that he had given up all his business so as to attend to the affairs of the company.

Redirect examination.

By Mr. JAMES G. FITCH, Esq.:

Q. How often were you in Judge Hamilton's office during the two years prior to his death?

A. My business is such that I am in and out of El Paso all the time, and I never failed to visit Judge Hamilton's office on each and every trip I made to town, and every few days while in town, as the Judge and I were very confidential.

Q. Well, about how often were you in his office?

A. I could not state, but I was in his office every few days when in town.

Q. State whether or not you ever found him engaged in the business of the company when you went there?

A. I frequently found him in correspondence in the company's affairs.

(Signed)

JAMES H. PARKER.

FENWICK B. HAMILTON, a witness on behalf of the plaintiff in No. 1539, and defendant in 1444, being first duly sworn, deposes and testifies as follows:

Examination by JAMES G. FITCH, Esq.:

97 Q. State your name, age and place of residence.

A. Fenwick B. Hamilton, 23, El Paso.

Q. You are a son of the late Judge H. B. Hamilton and one of the parties in these suits, are you not?

A. I am.

Q. Where were you residing during the year 1901?

A. In El Paso.

Q. And in 1902?

A. Also.

Q. And in 1903, up to the date of your father's death?

A. Up to February 23d, 1903, I left for the City of Mexico.

Q. Did you reside with your father during those years while in El Paso?

A. I did.

Q. State whether or not you visited at his office, and if so how frequently?

A. On an average of three or four times a week, all the time I was in El Paso.

Q. Do you know what business, or in whose business your father was engaged in, state whether you know or not?

A. I do not know that he was attorney for the Eagle Mining and Improvement Company.

Q. Do you know in what capacity he was employed by that company?

A. As their attorney.

Q. Do you know whether or not he made any journeys from El Paso as their attorney, and if you do, please state where he went and how many times he went?

A. He made three trips to Chicago, and one either to Kansas City or Wichita, and numerous trips to the mines, the latter on average of about once a month, I think.

Q. Are you able to state what proportion of his time was 98 taken up with the affairs of this company while he was here in his office in El Paso?

A. I think about two-thirds.

Q. Is there anything further that you know in regard to this case, Mr. Hamilton?

A. He told me from time to time that he was interested and what his expectations were, and every letter that I got from him while in the City of Mexico he always spoke of his interests in the Eagle Mining Company.

Col. PRICHARD: We move to strike out his last answer.

No cross examination.

(Signed)

FENWICK B. HAMILTON.

Mr. R. C. STURGEON, a witness on behalf of plaintiff in No. 1359 and defendant in No. 1444, being first duly sworn, deposes and testifies as follows:

Examination by Mr. JAMES G. FITCH, Esq.:

Q. Mr. Sturgeon, what is your present connection or position with the Eagle Mining and Improvement Company?

A. Secretary and Treasurer.

Q. When was this Company incorporated?

A. In the month of August, 1901.

Q. Is it not a fact that the articles of incorporation were executed by part of the incorporators as early as May 1901?

A. I don't know.

Q. Look at this which purports to be a copy of the articles and refresh your memory, and state if that is not a fact.

A. I could not refresh my memory because I never heard of the Company or any of its officers at that time.

Q. When did you first become connected with the Company?

99 A. I cannot say exactly, but I think it was in the month of April 1902.

Q. Who was president of the Company at that time?

A. J. S. Tilden.

Q. He was elected President, was he not, shortly after the incorporation of the Company?

A. I assume that he was, I don't know.

Q. Don't the records of the Company in your possession as Secretary, show who was the President?

A. The records show that Mr. Tilden was the first President of the Company, and I believe if I had the record here I could show what date he was the President, but I don't remember the date.

Q. How long did he continue as President of the Company?

A. About two years.

Q. Then up to the time of Judge Hamilton's death, the Judge having died the 27th of June 1903.

A. Yes, he was President at the time of the Judge's death.

Q. What connection or position did Mr. Milton George have with reference to this Company?

A. He was vice president.

Q. For what length of time was he vice-president?

A. My recollection is that it was for one year after October 1901, or from the organization to October 1902.

Q. Did he have any connection with the company after he ceased to be vice president. If so, state what?

A. Not during the year following October 1902.

Q. Is it not a fact that after October 1902, and during at least the remainder of that year, Mr. George was a financial agent of the company?

A. I think not.

Q. I will ask you to look at these letters signed by Milton 100 George, dated 12-20-02, 12-13-02, written on the letter heads of the company apparently, in which his name is inserted as financial agent, and state whether or not he was in fact such agent or held out to be such an agent by the company?

A. This letter head states that Mr. Milton George is financial agent, but as this is a personal letter written by Mr. George there is nothing to indicate that the company holds him out as its financial agent at that date.

Q. Was that at that time a regular letter head of the company?

A. No, sir.

Q. Ever seen copies of this prospectus before. (Showing witness prospectus of the Eagle Mining and Improvement company.)

A. Yes, I have. I saw ten thousand of them in the office of the company when I assumed my position with the company, and after reading one of them over, I destroyed them. I don't know that there were ten thousand; there were ten thousand and a few were sent out, the remainder were destroyed.

Mr. FITCH: We move to strike out that part of the answer in which he states that he destroyed these circulars.

Q. As a matter of fact, you do not know how many of these had been destroyed before you assumed your position with the company, do you?

A. Very few.

Q. All you know is what was told you, is it not?

A. I was never told anything about it. I judged from the number that were on hand and knowing how many had been purchased.

Mr. FITCH: We offer copy of Prospectus Eagle Mining and Improvement Company, in evidence, same marked "Exhibit C" herein.

Mr. PRICHARD: We object because no foundation laid for 101 its introduction, because it is immaterial, irrelevant and incompetent, and has no bearing on the issues in this case.

Q. Mr. Sturgeon, will you look at that printed copy of circular or statement and state whether you have ever seen copies of that before?

A. I have.

Q. Do you know whether that was issued with the approval and sanction of the company or by the company?

A. It was not.

Q. Who was it issued by?

A. It was issued by Mr. George, according to my recollection of it, and was submitted to me and I O. K.'d it.

Q. At what date was that circular or printed statement issued?

A. I can't remember the date, but it was sometime during 1902.

Q. Mr. Sturgeon, that bears the signature of Milton George, Financial Agent. Then Mr. Milton George was financial agent of the company in 1902, wasn't he?

A. Yes, sir.

Mr. FITCH: We here offer in evidence the circular identified by

the witness as being issued by Milton George and O. K'd by witness, which is marked by the Referee "Exhibit D."

Col. PRICHARD: We object to the introduction because the paper offered is immaterial, irrelevant, incompetent and has no bearing on the issues in this case.

Cross-examination.

(By GEORGE W. PRICHARD, Esq., Attorney for the Eagle Mining & Improvement Co.:)

Q. Mr. Sturgeon, when did you say that Mr. George 102 ceased to be the financial agent of the Eagle Mining and Improvement Company?

A. My recollection is that the Board of Directors passed a resolution abolishing the office of Financial Agent late in the summer of 1902, but Mr. George certainly ceased to — financial agent after the stockholders meeting which was in October 1902, at which election he failed to be re-elected a director of the Company.

Redirect examination.

By Mr. FITCH:

Q. Did Mr. George occupy the position of both Vice President and Financial Agent of the Company prior to October 1902?

—. Yes, sir, but he failed to be elected as a director at the stockholders' meeting at that date, and has not been financial agent since then.

(Signed)

R. C. STURGEON.

JOHN FRANKLIN, Esq., being first duly sworn, upon his oath deposes and testifies as follows:

Examination in chief by Mr. JAMES G. FITCH, Esq.:

Q. State your name, age, residence and occupation.

A. John Franklin, age 34, residence El Paso, Texas, occupation attorney at law.

Q. State whether or not you have been practicing and if so, what length of time?

A. I have practiced law in New Mexico since the fall of 1891.

Q. State whether or not you know the general fee or charge made by lawyers in New Mexico and in El Paso also.

A. I do.

Q. Did you know the late H. B. Hamilton in his lifetime?

103 A. I did.

—. Do you know what his standing was as a lawyer in the New Mexico bar and in El Paso as to his ability?

A. Yes.

Q. State what that standing was.

Col. PRICHARD: We object to this question for the reason that it is immaterial under the pleadings in this case.

A. It was very good.

Q. Do you know where Judge Hamilton resided during the last two years of his life? He died in the latter part of June 1903.

A. Yes, sir.

Q. Where did he reside?

A. He resided in El Paso, Texas.

Q. State where his office with reference to your office in El Paso.

A. Our offices were on the same floor of the same building, distant from each other two or three doors.

Q. Do you know the character of practice that Judge Hamilton was principally engaged in during those two years?

A. I know that his practice was simply of a civil nature and in a general way, from conversation with him, and also some dealings with him, that a large part of it was mining business. How much I do not know.

Q. Do you know who his client or clients were in this mining business?

Col. PRICHARD: Objected to as immaterial, irrelevant and incompetent.

A. I only know two; I know that the Eagle Mining Company (if that is its name, I do not know) was a company that he was doing some work for, only from what he told me in conversation. I know

that the American Gold Mining Company, I think it is, or a 104 company of some similar name that was operating in Lincoln County, was represented by him because he appeared for them in a case I brought in which that company was garnishee. The last company that I refer to is the company that purchased some mining property from Robinson and Dolph.

Col. PRICHARD: We move to strike out all the testimony of the witness relating to the American Gold Mining Company or relating to any individual or companies, other than the Eagle Mining and Improvement Company.

Q. Mr. Franklin, were you sufficiently acquainted with the character and extent of the services rendered by Judge Hamilton for the company you have called the Eagle Mining Company, to enable you to state what those services were reasonably worth?

A. No, sir.

Q. Mr. Franklin, if the Eagle Mining Company was a corporation organized under the laws of the Territory of New Mexico, with an authorized capital stock of ten million dollars, in the spring or summer of 1901, having its principal officers in the City of Chicago, Ill., but that it was engaged in the acquisition of mining property and operation of mines in Lincoln, N. M., the said company spending about three hundred thousand dollars in Lincoln County, N. M., in the acquisition or attempted acquisition of several hundred mining properties and claims, and operating them or some part of them within two years after its incorporation and prior to the 29th day of June, 1903; and if a lawyer of Judge Hamilton's standing were retained as a general attorney and counsel of such company from the time of its incorporation up to the 29th day of June, 1903, and in his duties and services as such general attorney consisted in super-

105 intending the work of incorporating, drawing up its articles of incorporation, and other matters connected with the corporate organization, and also in acting as its attorney in every matter that required the services of an attorney, including the passing upon titles of several hundred claims, and advising the company in any of its law suits and in all matters of a legal nature, including the matter of reorganization, the issuance and selling of stock, and the liability of its officers, and attending to and advising in regard to all litigation actual and present, said duties requiring at least three trips to the city of Chicago and frequent trips of once every two or three months to the Company's property in Lincoln county, and occupying with the time devoted to the company's business while living in El Paso about two-thirds of his entire time, are you able to state what such service would be fairly worth?

Col. PRICHARD: We object to the question, first: because it is not material under the issues in this case. Second: because the question as put is not based on the facts, of the case, and thirdly: there is no evidence whatever on the record showing that Judge Hamilton was the only counsel, showing that he passed upon the title of several hundred claims, showing that the company was ever organized, showing that he ever had anything to do with the issuance and sale of any stock, showing that the question of the liability of the officers ever came up, or that he ever appeared in a single case that was in litigation in the court either by or against the Eagle Mining and Improvement Company.

A. I am.

Q. In your opinion what would such services be fairly and reasonably worth?

Col. PRICHARD: Objected to on the same ground as the preceding objection.

106 A. I should think that such services would be worth from five to six thousand dollars a year. I cannot state within one thousand dollars or so.

Cross-examination.

By GEORGE W. PRICHARD, Esq., Attorney for the Eagle Mining & Improvement Co.:

Q. Do you know what proportion of the professional work rendered by Judge Hamilton, as between the Eagle Mining and Improvement Company and the American Gold Mining Company, was performed for the Eagle Mining Company?

Mr. FITCH: Objected to as immaterial and irrelevant and not proper cross-examination.

A. I do not.

Q. Mr. Franklin, suppose that Judge Hamilton, during the time that has been called to your attention, never brought a suit for the Eagle Mining and Improvement Company, nor defended one against

them, and the labor that he performed consisted in the preparation of certificate of incorporation for the company, and the drawing of about ten deeds, and the making of three trips to Chicago and upon average a trip once a month to Lincoln County, Territory of New Mexico, and that all his expenses for these trips were paid by the Eagle Mining and Improvement Company, would these facts modify your opinion as to what his services were worth?

A. If Judge Hamilton performed no services whatever, except the preparation of the articles of incorporation, the drawing of ten deeds, three trips to Chicago and one trip on an average each month to Lincoln, it might modify my opinion, but the extent of such modification would depend entirely on the character of the deeds that he drew, the amount of property conveyed by them, and the time consumed and the business performed on the trips referred to.

107 Q. Suppose, Mr. Franklin, that he performed no services on his trips to Lincoln County, except the trips themselves, and that the deeds he drew were for interest in unpatented mining claims of no value except a prospective value, the claims being undeveloped claims, would these facts modify your opinion as to what the services were worth?

A. Yes, those facts would to some extent modify my opinion. This, of course, is based upon the supposition that Judge Hamilton was charged with no responsibility as the general attorney of this company. At the risk of being charged with volunteered testimony, I think I can state my opinion about this clearly. If Judge Hamilton was charged by this company with the responsibility for the conduct of its legal affairs here, and it had invested substantially three hundred thousand dollars in money and he was required to, and did hold himself open and ready to perform any legal services that might be required of him as such general attorney in court or otherwise, in the protection of that property, and the mining company was actively engaging this capital in the purchase and development of its property, and this service required a substantial portion of Judge Hamilton's time, I should regard a retainer of about five thousand a year not unreasonable.

Q. Of course, that last part of your answer is based upon the supposition that there was no contract or understanding between the parties?

A. Yes.

(Signed)

JOHN FRANKLIN.

W. A. HAWKINS, Esq., a witness called in behalf of plaintiff in case No. 1539, and of defendants in case No. 1444, being first duly sworn, upon his oath deposes and testifies as follows:

108 Examination-in-chief by JAMES G. FITCH, Esq.:

Q. State your name, age, residence and occupation.

A. William A. Hawkins, 44 years, occupation, attorney at law. Residence, Alamogordo, N. M.

Q. State whether or not you ever engaged in the practice of law in New Mexico, and if so, for what length of time?

A. Yes, for twenty odd years.

Q. Are you familiar in a general way, with the scale of fees and charges of lawyers in New Mexico?

A. Yes.

Q. Did you know the late Judge H. B. Hamilton, in his lifetime?

A. I did.

Q. Did you know what his standing was as a lawyer in the New Mexico bar and in El Paso, Texas?

A. I do.

Q. Please state what that standing was?

A. He was a lawyer of first class standing and of high reputation in his profession.

Q. Do you know where Judge Hamilton resided during the last two years of his life, his death having occurred on or about June 29th 1903.

A. Yes, he resided at El Paso, Texas.

Q. Do you know what character of practice he was principally engaged in during that period?

A. During the last part of that period he had offices in the same building where my associates in the practice of the profession officed. I was in my offices in El Paso just across the hall of such building from his offices and I very frequently met and talked with him. He never seemed to be occupied with local business to any extent, but seemed to be devoting his time, so far as his conversations were an indication, to the legal affairs of clients engaged in mining

operations in New Mexico. I do not remember in particular 109 the names of such clients, but they were those who were in the ownership or operation of mines near Nogal in Lincoln County. I remember the names, the Eagle Mining Company and, I think, the American Mining Company though I am not certain of the latter. He was always discussing with me, whenever our conversations were at all lengthy, some of the propositions, arising in connection with such enterprises. He was also, I remember, a good many times a passenger on the El Paso & Northeastern Railroad and would travel, either on the trains of that Company, or see him passing Alamogordo as a passenger, and whenever I did enquire, or when I traveled with him, I understood that he was going to the vicinity where such mining operations were being conducted by his clients in connection with his relations to them, and gathered the impression from what I saw and heard from him that he was devoting the most of his time to the affairs of such client or clients so operating mines in Nogal.

Q. Do you know how frequently he made these trips over the El Paso & Northeastern Railway to these mining properties?

A. No, I cannot say, I only know I saw him several times while on such trips.

Q. Do you remember the names of any of these mining properties?

A. I remember no names except that of the Parsons property. He quite frequently mentioned that mine.

Q. Mr. Hawkins do you know sufficiently the nature, character and extent of services rendered by Judge Hamilton during the last

two years of his life, for and on behalf of the Eagle Mining and Improvement Company, to enable you to testify as to the value of such services?

A. I know from what he told me of the nature of such services, in a general way, but I cannot say that I know the extent of the same, if by that is meant the time he actually gave thereto, as I was then spending more than half of my time away from El Paso where he lived, probably dropping into El Paso for an average of one or two days a week, except when called there by some special occasion when I might remain there for a week at a time. What opinion I have as to the extent of the time given to such mining business by Judge Hamilton, was formed by what I saw when here or in his passing on the railroad, and conversations which I occasionally had with him, but from that opportunity and from such conversation, I judged that he was devoting the most of his time to the affairs of such client or clients in New Mexico. He might have given time and attention to other matters without my knowing anything about it. I am prepared to state my opinion as — the value and compensation right and proper for such services and for the time which I generally understood, as above stated, he was giving to the business of his clients based upon what I actually gathered from him as to the time which was consumed, and upon the basis that the majority of such time was so consumed, and upon my general information, received from him and from outside sources as to the magnitude of the interests which he was taking care of for such client in Lincoln County.

Q. Mr. Hawkins, will you state what, in your opinion, was the value of those services?

Col. PRICHARD: We object to the question because it is immaterial and because the testimony sought is not admissible under the pleading.

A. My opinion is based upon the facts above testified to by me, that such services so rendered were reasonably worth five thousand dollars per annum.

Q. Mr. Hawkins, if in addition to the facts testified to by you, it transpired that the Eagle Mining and Improvement Company was a corporation organized under the laws of New

Mexico in the spring or summer of 1901, with an authorized capitalization of ten million dollars which, after the expiration of a year, more or less, was reduced to five million dollars, the principal office of said company being in the city of Chicago, Ill., but said company being engaged in the acquisition or attempted acquisition of a very large number of mining claims and properties, in which business it expended about the sum of three hundred thousand dollars, said company having a general manager here in New Mexico, but its other officers residing in the east; and if it further transpired that a lawyer of Judge Hamilton's standing and ability was retained as a general attorney or counsel of said company; that he prepared the articles of incorporation and attended to all the details of said incorporation, and acted as its general attorney for a period of two years, in all matters referred to him as such general attorney, and

that in the course of said employment he made some three trips to Chicago, and visited the company's property and its General Manager in Lincoln County on an average of once a month or so, and that his time while in El Paso; was largely taken up with the Company's business, and in correspondence with the company's officers about that business, and that about two-thirds of his entire time, including the trips above mentioned, was occupied with that company's business what in your opinion, would be a reasonable compensation for such services?

Col. PRICHARD: We object to the question, first; because it is not material under the issues in this case. Second; because the question as put is not based upon facts in the case, and thirdly; there is no testimony showing any services rendered by Judge Hamilton in the acquisition of a large number of properties, or in the operation 112 of such properties, or that he was connected with the *perpetration* of the articles of incorporation of the company, or that he ever visited the company's property in Lincoln County, or that his time was largely taken up in correspondence with the officers.

A. Five thousand dollars a year and his expenses when absent from his office. In former answer, as to compensation which I thought was due him from what I knew of the facts, I omitted expense while absent from his office, but expenses while absent from his office should be added to such estimate.

Cross-examination by GEO. W. PRICHARD, Esq., attorney for Eagle Mining & Improvement Company:

Q. Mr. Hawkins, do you know how the time or the services of Judge Hamilton were divided between the Eagle Mining and Improvement Company and the American Gold Company?

Mr. FITCH: Objected to as immaterial and irrelevant and not proper cross-examination, no inquiry having been made under direct examination in preference to the American Gold Mining Company.

A. No, I do not. His principal conversation was with reference to legal points which, from the conversation, it appeared had arisen or were arising with reference to the interests of his clients and particular questions concerning certain mining claims, but the names of his clients only appeared incidentally in his conversation, except that I remember that there was a great deal of talk about the Eagle Mining Company and properly known as the Parsons' property and with reference to other matters I cannot be positive. In the way I was familiar with the American Mining Company, and with some 113 of the former officials and general status of that company, and it is my recollection that the same was very seldom referred to in our conversations, but I cannot have and never did have any opinion as to any comparative amount of services as between various clients, except that I understood in a general way, that he was very intimately associated with the looking out for the interests of the Eagle Mining Company.

Q. As I understand you, Mr. Hawkins, you estimate the value

of the services regarding the mines at or near Nogal, is not confined to any particular client, but that you are speaking of the services in general?

A. My opinion of that is this, from what I saw and learned from Judge Hamilton with reference to the affairs of the Eagle Mining Company, and the time he gave to its affairs, although he might have given a portion of his time to the affairs of other clients, that his professional services rendered to the Eagle Mining Company were reasonably worth the sum of five thousand dollars per annum, and his expenses while absent from his office. My opinion is also upon the hypothetical question suggested by the attorney for the plaintiff that the services of a general attorney devoting the time and carrying the responsibility of a General Attorney suggested in the hypothetical question, are reasonably worth the sum of five thousand dollars per annum and his expenses while absent from his office.

Col. PRICHARD: We move that the above answer be stricken out as not responsive.

Q. As I understand you, Mr. Hawkins, your information about services rendered by Judge Hamilton for the Eagle Mining and Improvement Company is based principally upon what Judge Hamilton told you, and from your own personal knowledge as to services rendered to the Eagle Mining and Improvement Company. Am I correct?

A. Based upon what he told me and what was apparent 114 in the conversations and discussions upon legal questions which I had with him, and from seeing him traveling on the road and learning them from him that he was going to or from the locality of the company's mines. I also had some discussion with him as between the interests of such Eagle Mining Company and some of my own clients in which he was representing the Eagle Company.

Col. PRICHARD: We move to strike out all the testimony of the witness not referring to the question and all referring to conversations held with Judge Hamilton or with any one else.

Q. Mr. Hawkins, suppose that Judge Hamilton during the time you have referred to, never brought a suit of the Eagle Mining and Improvement Company, nor defended one for it, and that the labor he performed consisted in the drawing of about ten deeds to mining locations that had no value, except a prospective value, in making three trips to Chicago, and on an average a trip once a month to Lincoln County where these mines are supposed to be, and that his expenses were paid by the Eagle Mining Company for these trips, would these facts modify your opinion as to what his services were worth per annum?

A. That would depend very largely upon the magnitude and character of the enterprise for which he was acting as General Attorney, and the responsibility that was upon him in either caring for or holding himself to care for the interests of such enterprise. If he was retained simply as an attorney to perform such services as those you have described and to be paid for by the piecemeal,

those facts would modify my opinion of the value of his services. But if he was retained as general attorney with the responsibility of holding himself at all times in readiness to care for such interests and to make such trips as frequently as you described,

115 whenever necessity arose, then I think that the position and responsibility alone are reasonably worth the sum of five thousand dollars per annum, and expenses from his office to a lawyer of Judge Hamilton's standing an-ability. The mere fact that a client so engaging and occupying a lawyer as a general attorney, under such circumstances, not calling on him for any further services than those you describe, would not, in my opinion, change the reasonable-ness of the figure which I have stated.

Q. Of course, your estimate as to the value of the services of Judge Hamilton, among other things, is based upon the supposition that there was no contract or understanding between Judge Hamilton and this Company as to what he should be paid.

A. Upon that, and the other suggestion in the hypothetical question that he was employed and recognized as the general attorney of such company.

(Signed)

WILLIAM A. HAWKINS.

Mr. R. C. STURGEON, witness heretofore sworn in this behalf on the part of Mary R. Hamilton, et al., was here re-called by attorney for Mrs. Mary R. Hamilton, and testified as follows:

Examination in chief by Mr. JAMES G. FITCH, Attorney for Plaintiff:

Q. What is your profession Mr. Sturgeon?

A. Up to the time I became identified with the Eagle Mining and Improvement Company, which was in the spring of 1902, I was practicing law.

Q. Were you identified with the company at the time it amended its articles of incorporation on or about May 28th, 1902.

A. Yes, sir.

Q. Were you present at the stockholders' meeting when the amendment was voted on or adopted?

116 A. I was.

Q. Was Judge Hamilton present at that meeting?

A. Yes.

Q. Who prepared the papers pertaining to that amendment?

A. I do not know.

Q. Do you know whether Judge Hamilton was consulted with reference to the amendment and the method of making the amendment under the laws of New Mexico?

A. He was there at the time and supervised the amendment proceedings.

Q. He was there for that purpose, was he not?

A. I believe he was.

Q. This stockholders' meeting at which this amendment was adopted was held at Chicago, at the office of the company?

A. Yes.

Q. Look at this paper here shown you, (giving witness paper)

and state whether that is a copy of the proceedings at the stockholders' meeting with reference to the amendment and of the amendment itself?

A. It seems to be.

(Copy is offered in evidence of the proceedings in reference to the amendment of the articles of incorporation and of the amendment to the Articles of Incorporation which was identified and testified about by the witness, the same being marked "Exhibit E" and placed in the charge of the referee.)

Q. Do you know who prepared the by-laws of the Eagle Mining and Improvement Company?

A. No, sir, I do not.

Q. You were not connected with the company at the time the by-laws were adopted, were you?

A. No.

Q. Are you familiar with the by-laws?

117 A. Yes, sir, to some extent. I have them in my office and refer to them when necessary.

Q. Can you state whether that is a copy of the by-laws? (Giving witness paper.)

A. Yes, sir, those are the by-laws.

(Paper identified by the witness as being a copy of the by-laws of the Eagle Mining and Improvement Company, is here placed in charge of the referee for identification and marked with his initial.)

Q. Are you familiar with the Articles of Incorporation of the Company?

A. Yes, in a general way.

Q. State whether or not that is a copy of the Articles of Incorporation? (Giving witness paper.)

A. I believe it is.

Q. Do you know who prepared those articles of incorporation?

A. No, I do not.

(Paper identified by the witness as being a copy of the articles of incorporation of the Eagle Mining and Improvement company is here placed in charge of the referee for identification and marked with his initial.)

No cross-examination.

(Signed)

R. C. STURGEON.

(The deed dated March 4th, 1902, from C. C. Parsons, and Allie Parsons, his wife, to H. B. Hamilton, acknowledged the 4th day of March, before a Notary Public in Jackson County, Mo., and also the deed dated April 15th, 1901, by Mrs. Agnes Carpenter to H. B. Hamilton, acknowledged April 15th, 1901, in Bremer County, State of Iowa, which said deeds were heretofore identified by the witness Mary R. Hamilton and placed in the charge of the referee, were here offered for reference and marked respectively "Exhibits F and G.")

118 BIRDIE M. SCANLON, a witness called on behalf of plaintiffs in case No. 1539, and defendants in 1444, being first duly sworn, upon her oath deposed and testified as follows:

Examination in chief by JAMES G. FITCH, Esq.:

Q. State your name, place of residence and occupation.

A. Birdie M. Scanlon, El Paso, Texas, Stenographer.

Q. State whether or not you knew the late Judge H. B. Hamilton in his lifetime.

A. I did.

Q. State whether or not you ever worked for him in any way and in what way.

A. I did work for him as his stenographer.

Q. State whether or not you worked for him after or during during the spring and summer of 1901, up to his death.

A. I think I worked for him until April, 1902, that is my recollection.

Q. Is there any circumstance, Miss Scanlon, that would refresh your memory as to that point.

A. Yes, I left for Houston in the latter part of April, 1902.

Q. When did you return from Houston, Miss Scanlon?

A. In March, 1903.

Q. State whether or not you worked for Judge Hamilton any after you returned?

A. I worked for him from June, 1903, until he died.

Q. Are you certain as to the date of his death?

A. I don't remember when he died.

Q. You say you worked as stenographer for him; did that include type writing?

A. Yes sir.

119 Q. Miss Scanlon, do you remember type-writing any papers with reference to the Eagle Mining and Improvement Company and any correspondence about the business of that Company, with its different officers?

A. I wrote the Articles of Incorporation and I think the by-laws; and I wrote a great many letters to different people connected with the company.

Q. Look at the paper here shown you (Witness shown paper) identified by the witness R. C. Sturgeon in his testimony, as the Articles of Incorporation of the Eagle Mining and Improvement Company) and state, if you can, whether that is a copy of those Articles and if so, who wrote that copy, if you know?

A. This is a copy made by me at the same time I made the original Articles.

Q. At whose dictation or at whose instruction did you prepare that?

A. Judge Hamilton dictated them.

Q. You stated that you wrote the by-laws of that company?

A. I think I did, I am not quite positive.

Q. If you wrote them, can you state what time you wrote them, in reference to the time you wrote the Articles?

Col. PRICHARD: Objected to because the witness has not answered that she did write them.

A. No, sir, I cannot.

Q. Look at this paper, please, entitled By-Laws of the Eagle Mining and Improvement Company, for the purpose of refreshing your memory, and then state whether or not, to the best of your recollection, you wrote the original articles?

Col. PRICHARD: Objected to for the reason above stated.

A. I did not make this copy and I cannot say that I wrote the original.

120 (Witness looks at paper.)

Q. Miss Scanlon, please look at these papers, which appear to be carbon copies of letters written on Judge Hamilton's letter heads, addressed to Hon. J. W. Raynolds, Secretary of the Territory, Santa Fe, New Mexico, and dated July 26th 1901 and state if you know anything about the writing of any such letters. (Letters shown to witness.)

Col. PRICHARD: Objected to because it is an attempt on the part of the attorney to explain and tell what the papers are and that the question is leading in form and is improper.

Mr. FITCH: We withdraw the last preceding question.

Q. Please look at the papers here shown you and state whether or not you have ever seen them before. (Witness here shown letter dated El Paso, Texas, July 26th 1901 and also letter dated El Paso, Texas, August 15th 1901, both addressed to Hon. J. W. Raynolds, Secretary of the Territory, Santa Fe, New Mexico.)

A. I wrote the originals of both of these letters.

Q. At whose dictation did you write them?

A. At Judge Hamilton's dictation.

Q. Who made those copies?

A. I did.

Q. Miss Scanlon, will you look briefly at these papers shown you; (Witness here handed the correspondence between Milton George and Judge Hamilton; R. C. Sturgeon and Judge Hamilton; J. S. Tilden and Judge Hamilton and between J. M. Rice and Judge Hamilton all of which correspondence and papers having been heretofore identified by the witness Mary R. Hamilton, as having been found by her among the papers of Judge Hamilton, after his death, which papers were placed in the charge of the referee after the identification of the same by the witness Mary R.

121 (Hamilton) and state briefly whether those are the letters, or a part of the letters written by you to different officers of the Eagle Mining and Improvement Company?

A. I wrote some of these letters.

Q. Are these some of the letters which you stated that you wrote for Judge Hamilton to officers of the Eagle Mining and Improvement Company?

A. Yes, sir, they are.

Q. I think you stated, Miss Scanlon, that you worked for Judge

Hamilton up to the time of his death. Please look at the date of the last letter written to Mr. Sturgeon, and the last letter written to Mr. J. S. Tilden, and state if that enables you to state, more or less approximately, the date of Judge Hamilton's death, assuming that those were the last letters written? (Witness looks at letters.)

A. I do not remember the date of Judge Hamilton's death, but if those were the last letters written, he must have died sometime in July.

Q. Can you state, Miss Scanlon, how much of Judge Hamilton's time was occupied with the affairs of the Eagle Mining and Improvement Company, including correspondence, during the periods that you worked for him from the spring or summer of 1901, I mean about what portion of his time appeared to be so occupied?

Col. PRICHARD: Objected to because it is not shown by the testimony of this witness that she knows that any of the time of Judge Hamilton was occupied with the business of the Eagle Mining and Improvement Company, and because it is immaterial.

A. I should say it took up about two-thirds of his time.

No Cross Examination.

(Signed)

BIRDIE M. SCANLON.

122 Mrs. MARY R. HAMILTON, the witness heretofore sworn in this behalf, on the part of Mary R. Hamilton, et al., was here recalled by attorney for Mrs. Mary R. Hamilton, and testified as follows:

Examination-in-chief by Mr. JAMES G. FITCH, attorney for Mrs. Mary R. Hamilton, et al.:

Q. Mrs. Hamilton, please look at the papers here shown you, entitled, "Articles of Incorporation of the Eagle Mining and Improvement Company," "By laws of the Eagle Mining and Improvement Company," and "Amended Articles of Incorporation of the Eagle Mining and Improvement Company," (Witness is shown papers) and state, if you please, whether you have ever seen them before, and if so, where and when?

A. I have seen these papers before among papers found in my husband's office.

Q. You are able to identify them as papers found in your husband's office?

A. Yes, sir.

Mr. FITCH: We offer in evidence paper heretofore identified and entitled: Articles of Incorporation of the Eagle Mining and Improvement Company, also offers in evidence paper heretofore identified, entitled: By-laws of the Eagle Mining and Improvement Company, said papers being taken charge of by the referee herein and marked respectively "Exhibits H and I."

Q. Mrs. Hamilton, please examine the papers here shown you (witness here handed package of letters including two letters dated July 29th and August 15th, 1901, respectively, the same being the two letters identified by the witness Birdie M. Scanlon as having

been written by her to Hon. J. W. Raynolds, Secretary of the Territory, Santa Fe, N. Mex., at the dictation of Judge Hamilton, also letters dated '7 29, '01, August 9th, 1901; August 19, 1901; 123 September 29, 1901, and June 5th, 1902, the last named letters purporting to be signed by J. W. Raynolds, Secretary of New Mexico), and state whether you have ever seen them before. If so, when and where?

A. I recognize these papers as some that I found among Judge Hamilton's papers.

No cross-examination.

(Signed)

MARY R. HAMILTON.

(Attorney for the Eagle Mining Company here admits the signature of J. W. Raynolds to the above described letters identified by the witness, Mrs. Mary R. Hamilton.)

(Attorney for Mrs. Mary R. Hamilton and others here offers in evidence these said letters signed by J. W. Raynolds, and the two carbon copies of letters written by Judge Hamilton to said J. W. Raynolds, Secretary of the Territory, said letters being attached together and the packages marked "Exhibit J." herein.)

(The attorney for the Eagle Mining and Improvement Company objects to the introduction of the letters referred to, because they are immaterial, irrelevant and incompetent, and have no bearing upon the issue in this case; that they are self serving statements, so far as the letters of the deceased H. B. Hamilton are concerned, and because they are not shown to be the letters of the said H. B. Hamilton.)

(Attorney for Mrs. Mary R. Hamilton and others now offers in evidence separately the letters signed Sturgeon and R. C. Sturgeon and also the carbon and letter press copies of letters written by Judge Hamilton to said Sturgeon, contained in the package labelled "Sturgeon correspondence," and heretofore identified by Mary R. Hamilton as papers found among the papers of Judge Hamilton, after his death, and heretofore placed in charge of the referee herein. 124 all of said papers and copies of letters herein being attached in one package and marked "Exhibit K.")

(Attorney for Mary R. Hamilton and others now offers in evidence the letters and telegrams signed by J. M. Rice and heretofore identified, and also offers separately the carbon or letter press copies of letters written by Judge Hamilton to the said J. M. Rice, and heretofore identified and contained in the package labelled, "J. M. Rice correspondence," said correspondence being between said J. M. Rice and Judge Hamilton, being the correspondence identified by the witness Mary R. Hamilton, and heretofore placed in the hands of the referee and marked "Exhibit L" herein.)

(Attorney for Mary R. Hamilton and others offers in evidence each separately, letters signed by J. S. Tilden and heretofore identified, and also offers separately carbon or letter press copies of letters written by Judge Hamilton to said Tilden and heretofore identified. Said package of letters being letters also identified by the witness Mary R. Hamilton, heretofore placed in the hands of the referee, and marked "Exhibit M" herein.)

(Attorney for Mary R. Hamilton and others now offers in evidence separately each of the letters signed Milton George, and heretofore identified, and also each of the carbon copies of letters written by Judge Hamilton to said Milton George, and heretofore identified. Said letters and copies of letters between Milton George and Judge Hamilton being also papers heretofore identified by the witness Mary R. Hamilton, and heretofore placed in the charge of the Referee, and herein Marked "Exhibit N.")

Attorney for the Eagle Mining and Improvement Company here specifically objects to each and every letter above referred to being introduced or read, as testimony in this case, first; because 125 said letters are immaterial, irrelevant and incompetent. Second; they have no bearing upon the issues in this case. Third; the alleged correspondence is not a connected correspondence with reference to the matters involved in this suit. Fourth; the letters of Judge Hamilton are self serving statements in his own interest. Seventh; J. S. Tilden was not authorized to enter into any contractual relations with Judge Hamilton of any sort. Eighth; Milton George was not authorized to enter into any contract, or to make any agreement with Judge Hamilton as to his services, or his compensation therefor. Ninth; because R. C. Sturgeon, one of the officers of the company, had no authority to make any contract with Judge Hamilton with relation to professional services, or to agree to the payment of any compensation therefor. Tenth; because J. M. Rice under the by-laws of the company and by authority of the company, was the only officer of the company authorized to make any contract with Judge Hamilton, or anyone else as to professional services, and for the payment for such services, and that the company is not bound by any contract or agreement or promise of any one, except the contract, agreement or promise of the said Rice.

Witness MARY R. HAMILTON, heretofore called and sworn, was at this time recalled by Mr. Fitch, counsel for Mary R. Hamilton and others, and testified as follows:

Examination-in-chief by JAMES G. FITCH, Esq.:

Q. Mrs. Hamilton, will you please state whether upon the examination of your husband's papers after his death, you found any other correspondence or letters written by Messrs. Rice, Sturgeon, Tilden or George Milton to Judge Hamilton, or any copies of 126 letters written by Judge Hamilton to either of these gentlemen, besides those that you have here identified and are offered in evidence?

A. I collected all the letters and handed them over to you and have not found any since, and I presume they are all among these letters.

Q. Do you know of any other letters or correspondence between these parties and your late husband?

A. I do not.

No cross-examination.

(Signed)

MARY R. HAMILTON.

(Attorney for Mary R. Hamilton and others introduces in evidence what purports to be a certified copy of a contract or agreement between E. S. Parsons and H. B. Hamilton, dated the 10th day of April A. D. 1893. Same being taken charge of by the referee herein and marked "Exhibit O.")

Judge A. B. FALL, witness called on behalf of the plaintiff in No. 1539 and of defendant in 1444, being first duly sworn, deposes and testifies as follows:

Examination-in-chief by Mr. JAMES G. FITCH:

Q. State your name, age, residence and occupation.

A. Albert B. Fall, Las Cruces, N. Mex., 43 years old, occupation lawyer.

Q. How long have you practiced law in New Mexico?

A. Since '87.

Q. Are you familiar in a general way with the scale of fees and charges of lawyers in New Mexico?

A. I am.

127 Q. Did you know the late H. B. Hamilton in his lifetime?

A. I did. I served on the bench with him in '93 to '95, and knew him both before and afterwards as a practitioner.

Q. Will you please state what was his standing as a lawyer, as to his ability?

A. He was known as one of the best lawyers in the Territory of New Mexico.

Q. Do you know where Judge Hamilton resided during the last two years of his life? The Judge having died the latter part of June 1903.

A. I think he resided in El Paso, Texas; his residence there having been from 1899, as far as I remember. I think it was in 1899 that Hamilton went into partnership with Judge Clark and myself. I think it was in May, 1899.

Q. Were you in partnership with him during the last two years of his life?

A. No, just prior to that time. I think our partnership extended from May 1899 until about January 1900, something like that, possibly November prior.

Q. Judge Fall did you have an office in El Paso during the years of 1901, 1902, 1903?

A. I did, sir, in co-partnership with Leigh Clark and afterwards with Leigh Clark, John Franklin and W. A. Hawkins.

Q. Where was that office with reference to Judge Hamilton's office?

A. Judge Hamilton, Leigh Clark and myself had offices together in El Paso, Texas, in the Mundy Building up to about November 20th or 26th, 1899; after that I had an office in the same building with Leigh Clark, Hawkins and Franklin, and Judge Hamilton maintained an office on the opposite side of the hall from us up to I think about the time of his death.

28 Q. Do you know, Judge Fall, of the character of business practice that Judge Hamilton was engaged in about the last two years of his life?

A. I do, because the Judge and myself were in frequent consultation concerning cases which we might respectively have, particularly in New Mexico, during that time.

Q. Judge Fall, do you know of a corporation known as the Eagle Mining and Improvement Company?

A. I know generally of such a corporation and that they were doing business in Lincoln County, N. Mex., around Nogal and White Oaks during the years after my separation from Judge Hamilton in El Paso, and prior to his death.

Q. Do you know what connection, if any, Judge Hamilton had with that Company?

A. Only from what Judge Hamilton stated to me in asking my advice or stating propositions to me connected with said company.

Q. Judge Fall, are you sufficiently familiar with the connection of and services rendered by Judge Hamilton with and to said Company to be able to state what the value of his services was during the two years prior to his death?

A. That is a harsh question to answer. I knew that Judge Hamilton was connected with the company, was its legal adviser up to the time of his death, but just how much work he did in such capacity I could not positively say, whether a greater portion of his time, or less, was required, it would be impossible for me to state positively and therefore I could not say what his services were worth, unless I knew about what proportion of his time was devoted to such service. I knew that he was absent from here many times, as I understood from him and other sources, upon such service, but I was also away from here possibly two-thirds of my time and therefore could not positively state what proportion of his time was devoted to the service of the Eagle Company.

Q. Judge Fall, if it were shown that the Eagle Mining and Improvement Company was a corporation organized under the laws of New Mexico in the spring or summer of 1901, with an authorized capitalization of ten million dollars which, after the expiration of about a year, was reduced to five million dollars, with its principal office in the City of Chicago, Ill., but with a general manager in New Mexico; that the said company was engaged in the acquisition or attempted acquisition of a very large number of properties and mining claims in Lincoln County, New Mexico, and to some extent in the operation of said properties, and in its business expended the sum of about three hundred thousand dollars, and that a lawyer of Judge Hamilton's standing and ability was retained from the inception of the incorporation as its general attorney and counsellor; that he prepared the articles of incorporation and attended to the details of the incorporating, and to the matter of amending its articles at a stockholders' meeting in Chicago, and that he acted as its general counsel for the period of about two years in all matters referred to him in any way, or which he was in any way called upon by said company or its officers for action and advise, and undertook and assumed all the duties and responsibilities in any way

connected with said employment, and in the course of said employment he made some three trips to Chicago and visited the company's property in Lincoln County on an average of once a month or so, and that his time while in El Paso, was largely taken up with the company's business, and in correspondence with its different officers about that business, and that about two-thirds of his entire time, including the trips above mentioned, was occupied with the company's business, are you able to state what, in your opinion, 130 would be a reasonable compensation for such services?

Col. PRICHARD: We object to the foregoing question, first: because it is not material under the issues in this case. Second: because the question as put is not based on the facts in the case, and thirdly: there is no evidence in the record showing the acquisition of a large number of mining claims by this company, or that it was engaged during the time referred to in the operation of mines, or that Judge Hamilton attended to all the details in amending its Articles of Incorporation, or that any matters were referred to him for action or advice or that he undertook all the responsibilities in relation to the company's business, as an attorney, or that he ever visited the company's property in Lincoln County, New Mexico?

A. I think so, yes, what I think is a reasonable compensation.

Q. What, in your opinion, Judge Fall, would be a reasonable compensation for such services?

A. Five thousand dollars a year at the least estimate.

Col. PRICHARD: We move that all that portion of the testimony of the witness relating to the conversations with the late H. B. Hamilton be stricken out.

Cross-examination.

By GEORGE W. PRICHARD, Esq., attorney for the Eagle Mining and Improvement Co.:

Q. Judge Fall, suppose that Judge Hamilton, during the time that you have referred to, never brought a suit for the Eagle Mining and Improvement Company, nor defended one that was brought against the Company, and that the labor he performed as attorney 131 consisted in the preparation of certificate of incorporation for the Company, the drawing of about ten deeds, the making of three trips to Chicago, and one trip, on an average, to Lincoln county, Territory of New Mexico, and that all his expenses for said trips were paid by the Eagle Mining and Improvement Company, would these facts modify your opinion as to what his services were worth?

A. Not necessarily. I consider that an attorney in such capacity can often earn ten thousand dollars by keeping his clients out of law suits when his fees for defending or prosecuting such suits might not be agreed upon, at first, more than five thousand dollars, then again, the drawing of ten deeds presupposes the examination of ten titles with possibly ten grantors to each, and such examination, passing upon such titles, and drawing deeds would, in many cases be worth more than an annual salary such as I have testified to.

Q. Of course, Judge Fall, you have no knowledge that Judge Hamilton ever examined the title to ten properties before drawing the ten deeds. If it were true that he made no such examination before drawing the deeds referred to, would that fact modify your opinion as to what his services were worth?

A. It certainly would, as I am testifying as to what I believe would be the reasonable value of the services of any conscientious attorney under the circumstances stated in the question propounded to me.

Q. It is true, is it not, Judge, that your answer as to the value of the services suggested in the question of the attorney for Mrs. Hamilton and others, among other things is based upon the supposition that there was no contract or understanding between the parties as to what Judge Hamilton should be paid for his services?

A. Certainly my testimony is based upon the state of facts presented to me by the question asked as to what I thought of 132 the value of the services performed under such circumstances.

If there was any contract providing for any specific sum between the parties, I knew of no such contract and the compensation should be based upon the terms of such contract.

Redirect examination.

By Mr. FITCH:

Q. Judge Fall, would your opinion as to the value of such services be modified in any way by the fact that the general attorney examined or did not examine one or more titles, or prosecuted or defended suits brought by or against his client, or by the fact that he did do or did not do any particular thing, provided that during the period referred to he acted and was always ready and willing to act in all matters where his clients required his services or advice, assumed the responsibilities connected with the position, and that about substantially two-thirds of his time was taken up with said company's business?

A. My answer would not be modified if the attorney gave his time and attention to the business of the company so that he stood ready to advise them upon every possible occasion, and to defend them against any suit brought, or prosecute in their behalf any suit which they might desire brought, or examine any title which they might desire examined, in other words; if such attorney gave his time and attention to the business of the company and stood ready to bring suits or defend the same in the name of the company, and to examine titles for them at all times, then my answer, as to the value of his services, should not be in any way amended.

(Signed)

ALBERT B. FALL.

(James G. Fitch, Esq., attorney for Mary R. Hamilton and others in said causes, here announces that he closes the taking of 133 testimony on behalf of Mary R. Hamilton and others, in said cause, at this time, reserving the right to introduce any further testimony on behalf of his clients before the referee Earl E. Sidebottom.)

George W. Prichard, Esq., attorney for the Eagle Mining and Improvement Company here announces that he is not ready at this time to proceed with the taking of the testimony on behalf of his client in said cause.)

(And the said referee W. H. Winter, here adjourns the taking of testimony in said causes before him.)

In the District Court of the Sixth Judicial District of the Territory of New Mexico, Within and for the County of Lincoln.

No. 1444.

THE EAGLE MINING AND IMPROVEMENT COMPANY,
vs.
MARY R. HAMILTON et al.

And

No. 1539.

H. B. HAMILTON, JR., Administrator, MARY R. HAMILTON, et al.
vs.

THE EAGLE MINING AND IMPROVEMENT COMPANY,

To the Honorable Edward A. Mann, Judge of said Court:

Comes now W. H. Winter, one of the referees heretofore appointed in said causes to hear and take the testimony in said causes of such witnesses as resided at, or were to be found in El Paso County, Texas, and does hereby report to the Court and certify:

That acting under an order of this Court made, filed and entered in said causes on the 19th day of April A. D. 1905, as one of the referees in said causes, I did on the 11th day of May A. D. 1905 set said causes for the taking and hearing of such testimony of the witnesses residing in or to be found in El Paso County, Texas, for the 29th day of May A. D. 1905, at my office in the Masonic 134 Building, in El Paso, El Paso County, Texas, and that I also on said 11th day of May A. D. 1905 gave the respective parties notice in writing of such setting of said causes for the taking of such testimony, by mailing to Geo. W. Prichard, Esq., attorney of record of the Eagle Mining and Improvement Company, addressed to Santa Fe, New Mexico and also by mailing to James G. Fiteh, Esq., attorney of record for Mary R. Hamilton, et al., addressed to Socorro, New Mexico, each a full and accurate copy of the notice which I caused to be filed in said causes on the 16th day of May A. D. 1905.

That on the 29th day of May, A. D. 1905, before proceeding to hear or take any testimony in said causes, I took and subscribed an oath before J. H. Coons, a Notary Public in and for El Paso County, Texas, who was duly authorized to administer the same, faithfully and fairly to hear and examine the said causes and to make a just, impartial and true report according to the best of my understand-

ing, which said oath is herewith transmitted, returned and filed with this report and made a part of the same; that on said 29th day of May, A. D. 1905, after taking and subscribing such oath, that said defendants in said case No. 1444 and said plaintiffs in said case No. 1539 having appeared by James G. Fitch, Esq., their attorney for record and the Eagle Mining and Improvement Company also appearing by J. M. Rice, its General Manager and also by R. C. Sturgeon its Secretary and Treasurer and that on said day the taking of testimony in said causes, by agreement of parties, was adjourned until May 30th, A. D. 1905, to accommodate the Hon. George W. Prichard, attorney of record for the Eagle Mining and Improvement Company; and that on May 30th at nine o'clock a. m.

A. D. 1905, at my office in El Paso, Texas, I proceeded with 135 the hearing of said causes and the taking of such testimony therein; all parties appearing by James G. Fitch, Esq., and Geo. W. Prichard, Esq., their respective attorneys of record as aforesaid.

That all of the testimony taken before me and all the proceedings had in said cases before me was and were reduced to writing by a type-writer in my presence; that I administered an oath to each of the following named witnesses who testified on behalf of Mary R. Hamilton, et al., they being the defendants in case No. 1444 and plaintiffs in case No. 1539, to-wit: Mary R. Hamilton, James H. Parker, Fenwick D. Hamilton, R. C. Sturgeon, John Franklin, Esq., William A. Hawkins, Esq., Birdie M. Scanlon and Judge Albert B. Fall, to depose the truth, the whole truth and nothing but the truth, etc., in said causes and who testified in the order named.

That all of the evidence heard and taken and all of the proceedings had in said causes was reduced to writing by a type-writer at the time such evidence was offered and at the time said witnesses testified and in my presence and thereafter signed by the respective witnesses in my presence; the said parties by their respective attorneys of record agreeing upon that method of taking the testimony.

That the hearing and taking of such testimony was not concluded on the 30th day of May, A. D. 1905, and that on said day I adjourned the further taking of testimony in said causes over until the following day, to-wit: May 31st, 1905, when the hearing and taking of testimony was resumed, all parties being present by their respective attorneys of record as aforesaid, and that on said 31st day of May, A. D. 1905, I proceeded further with the taking of such testimony and that all of the testimony offered by the said parties, or either of them, was concluded on said day and all 136 parties having announced by their respective attorney of record that they had no further evidence to offer before me. I proceeded to close the taking of testimony in said causes in so far as the same was to be taken before me and therewith finally adjourned the same on said last named day.

And that I herewith transmit, return and file my report of all the testimony taken and evidence offered before me and all other proceedings had before me, consisting of sixty pages of type-written evidence herewith attached, the pages being numbered one to sixty

respectively, and also including all exhibits mentioned in such evidence consisting of letters, copies of letters, deeds, contracts, documents, etc. And I herewith transmit, return and file with such testimony and proceedings and with this report all of said exhibits, to-wit: Exhibits A, B, C, D, E, F, G, H, I, J, L, M, N, O and make the same part of this report.

And I further certify that my report, together with the sixty pages of testimony and proceedings and the said Exhibits numbered respectively A to O, fifteen in number, shows a full, complete, fair, impartial and accurate statement of all the evidence taken and all the proceedings had before in said causes.

My fees for taking such testimony are as follows:

For noting one meeting to take testimony May 29th, 1905..	\$1 00
For noting two adjournments May 29 and 30, 1905 @ \$1.00	2 00
For swearing 8 witnesses @ 25 cents and certifying same..	2 00
Certifying and transmitting report to the Court.....	1 50
For writing out, transmitting and reporting the proceedings and testimony taken for the first copy 220 folios @ 15 cents	33 00
137	
For two additional copies, one for each attorney already furnished at 5 cents per folio each.....	22 00
Total fees.....	\$61 50
Part <i>part</i> payment of Ten Dollars.....	\$10 00
Balance due.....	\$51 50

To all of which I hereby certify as witness my hand at El Paso, Texas, this 1st day of June, A. D. 1905.

(Signed)

W. H. WINTER, *Referee.*

“EXHIBIT A.” W. H. W.

This Indenture, made the — day of March, A. D. 1902, between H. B. Hamilton and Mary R. Hamilton, his wife, and of the City and County of El Paso and State of Texas, the part.. of the first part and The Eagle Mining and Improvement Company, a corporation duly organized, existing and doing business under the laws of the Territory of New Mexico, party of the second part:

Witnesseth, that the said part.. of the first part, for and in consideration of the sum of Fifteen Thousand (\$15,000.00) Dollars, lawful money of the United States, to them in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, have granted, bargained, sold, remised, released, conveyed and confirmed, and by these presents do grant, bargain, sell, release, remise, convey and confirm unto the said party of the second part, and to its successors, heirs and assigns forever the following

138 described mine and mining property, mining ground, claims and lodes and their appurtenances, situated in the Bonito Mining District, County of Lincoln and Territory of New Mexico, to-wit:

All of our right, title and interest which we have or hold in or to the Hopeful Lode Mining Claim, and Hopeful Mill-site, which said Hopeful Mining Claim, and Mill-site are fully and more particularly described in the patent from the United States Government, issued to R. C. Parsons, and designated as survey No. 652A and 652B, which said patent is duly recorded in the recorder's office of Lincoln County, Territory of New Mexico, in Book "D" at page 521 of the Records of Deeds of said County and to which record reference is hereby made for a more full and complete description of said lode and Mill-site.

Also all of our right title and interest in and to the Parsons' Townsite, located adjoining the said Hopeful Mill-site as above described.

It being hereby intended by this conveyance to convey to the said party of the second part all of our right, title and interest in and to the said property.

Together with all the dips, spurs and angles and also all the metals, ores, gold, silver, and copper bearing quartz, rock and earth therein, and all the rights and privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements hereditaments and appurtenances thereto belonging or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, and interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said part. . of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances.

To have and to hold all and singular, the above mentioned and described premises, together with the appurtenances, privileges thereto incident, unto the said party of the second part, its successors heirs and assigns forever. And the said part—of the first part and their heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, its successors, heirs and assigns, against the said part—of the first part, and their heirs, and against all and every person and persons whomsoever (save and except the United States) lawfully claiming or to claim the same or any part thereof, shall and will warrant and by these presents forever defend.

In witness whereof the said part of the first part have hereunto set their hand and seal at El Paso, El Paso County, Texas, the day and year first above written.

Signed, sealed and delivered in the presence of:

(Signed)

H. B. HAMILTON.

[SEAL.]

MARY R. HAMILTON.

[SEAL.]

STATE OF TEXAS,
County of El Paso:

On this 27th day of March, A. D. 1902, before me, the undersigned, a Notary Public within and for the County of El Paso, State of Texas, personally appeared H. B. Hamilton and Mary R. Hamilton, his wife, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged to me that they executed the same as their free act and deed and for the purposes and consideration therein expressed.

In witness whereof I have hereunto set my hand and affixed my seal of office the day and year last above written.

[N. P. SEAL.]

MANFORD E. WILLIAMS,
Notary Public, El Paso County, Texas.

140 Endorsed: Mining deed. H. B. Hamilton and Mary R.
Hamilton, to Eagle Mining and Improvement Company.

“EXHIBIT B.” W. H. W.

The within deed is placed in the hands of the First National Bank at El Paso, Texas, and is to be delivered by the Cashier of said Bank *delivered* to the Eagle Mining and Improvement Company, or to its duly authorized agent, provided the said Company shall place, or caused to be placed in said Bank to the credit of H. B. Hamilton, the sum of Fifteen Thousand (\$15,000.00) Dollars on or before the 20th day of June, A. D. 1902. If said money is not so placed in said bank within the said time, said papers are to be returned to the said Hamilton. If the same is so paid as above provided, then the said papers are to be delivered to said Company or to its agent.

(Signed)

H. B. HAMILTON.

Dated at El Paso, Texas, this 27th day of March, A. D. 1902.

“EXHIBIT E.” W. H. W.

(Copy.)

Office of the Eagle Mining and Improvement Company.

CHICAGO, ILL., May 28th, 1902.

At a meeting of the stockholders of the Eagle Mining and Improvement Company, held at its office at Room 314 Tacoma Building, Chicago, Illinois, at 2 o'clock p. m., on the 28th day of May, A. D. 1902, all the stockholders of said Company having been duly notified of said meeting, and of the purpose for which same was called, and they being present either in person or by proxy, the following proceedings were had: On motion Josiah S. Tilden was

141 duly elected President of said stockholders' meeting, and Robert C. Sturgeon was duly elected Secretary thereof. The President stated that the object of the meeting was for the purpose of authorizing the amendment of Article Two of the Articles of Incorporation of said Company, changing the par value of the shares of said Company from One Hundred Dollars per share, to One Dollar per share. The Secretary of said meeting read to the meeting the proceedings of the Board of Directors of said Company, held on the 9th day of April, 1902, authorizing the call of the meeting of the stockholders for such purpose. Thereupon the following resolution was offered:

Whereas the Board of Directors of this company at a meeting held by it on the 9th day of April, 1902, at the office of said company in Room 314 Tacoma Building, Chicago, Illinois, passed a resolution ordering the president and secretary to call a meeting of the stockholders thereof, to be held at 2 p. m., on the 29th day of May, A. D. 1902, at the office of said company, at Room 314 Tacoma Building, Chicago, Illinois, which said resolution set forth that the object of said stockholders' meeting is to vote on the amendment of Article Two of the charter of said company, changing the par value thereof from one hundred dollars per share to one dollar per share, and it was ordered by said resolution so adopted, that this company, through its president and secretary, notify all of the stockholders of this company of said meeting, and of the time and place thereof and the purpose for which the said meeting would be held; and,

Whereas, it appears that notice has been given to the stockholders of this company of this proposed meeting and of the time and place thereof, and the purpose for which the same was held; therefore, be it resolved by the stockholders of this company that Article Two (2) of the original charter of this company be and the same 142 is hereby amended so as to reduce the par value of the shares of the stock of this company from one hundred dollars per share to one dollar per share, so that said Article Two (2), when so amended, shall read as follows:

"Article 2. The amount of the capital stock of this corporation shall be the sum of ten million dollars to *by* divided into ten million of shares of the par value of one dollar per share," and that the Board of Directors of this company be, and they are hereby ordered to cause to be prepared in proper form, sign, seal, acknowledge, execute and file the necessary amendment of the charter of said company, and that they cause said amended charter to be filed in the office of the Secretary of the Territory of New Mexico, and in the office of the Probate Clerk of Lincoln County, in said territory, which resolution was, on the call of the roll of the stockholders, unanimously voted as follows: there being present or by proxy one hundred and sixty-one stockholders voting 4,578 shares, all of which voted in favor of said amendment, being nine-tenths of all the issued stock of said company.

(Signed)

JOSIAH S. TILDEN,
Chairman of said Meeting.

R. C. STURGEON,
Secretary of said Meeting.

STATE OF ILLINOIS,
County of Cook:

Josiah S. Tilden and R. C. Sturgeon, on their oaths do certify that a meeting of the stockholders of the Eagle Mining and Improvement Company was duly called by the Board of Directors of the said company, and in pursuance of said call notice was duly given to all the stockholders of said company, and that in pursuance of said call and said notice, the meeting of the stockholders was held at the office of said company at Room 314 Tacoma Building, Chicago, Illinois, at 2 o'clock P. M., on the 28th day of 143 May, A. D. 1902, and that he, the said Josiah S. Tilden was elected chairman of said meeting, and R. C. Sturgeon was elected secretary thereof, and that the above and foregoing is a true and correct record of the proceedings of said stockholders' meeting. The resolution to amend Article Two of the Charter of said company was duly adopted by the vote, as set forth in the proceedings of said meeting as herein set forth.

JOSIAH S. TILDEN, *Chairman.*

R. C. STURGEON, *Secretary.*

Subscribed and sworn to before me this 28th day of May, A. D. 1902.

(Signed)

BEATRICE PHELPS,
Notary Public in and for Cook Co., Ill.

STATE OF ILLINOIS,
County of Cook, ss:

I, Philip Knopf, County Clerk and Clerk of the County Court of Cook County, the same being a Court of record, do hereby certify that Beatrice Phelps, whose name is subscribed to the annexed jurat was, at the time of signing the same, a notary public in Cook County, duly commissioned, sworn and acting as such, and authorized to administer oaths; that I am well acquainted with the hand writing of said notary and verily believe that the signature to the said jurat is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at the City of Chicago, in the said county, this 29th day of May, 1902.

(Copy.)

PHILIP KNOFF, *Clerk.*

144 *Amended Articles of Incorporation of the Eagle Mining & Improvement Company.*

Know all men by these presents: That we Milton George, Josiah S. Tilden and _____ of the City of Chicago, State of Illinois, and John M. Rice of the County of Lincoln, Territory of New Mexico, being a majority of the Board of Directors of said Company under the Charter heretofore filed, under and by the authority and direction of a general meeting of all the stockholders of said Company,

held on the 28th day of May, A. D. 1902 at the office of said Company in the Tacoma Building, City of Chicago, State of Illinois, at which said meeting all the stockholders of said Company were present or represented in pursuance of notice before that time regularly given as required by law, a copy of which said meeting and said resolutions adopted by said stockholders are hereto attached, do hereby make, state, acknowledge and file the following amended Articles of Incorporation of the said Company.

Charter.

Article 1.

The name of this Corporation and body politic shall be and is the Eagle Mining & Improvement Company by which name it shall be known and under which it shall transact all of its business.

Article 2.

The amount of the capital stock of this corporation shall be the sum of Ten Million of Dollars, divided into Ten Million of shares of the par value of One Dollar per share.

Article 3.

This Company and corporation is formed for the purpose
145 of engaging in the following lines of business, to-wit: It shall have the right and authority to lease, bond, buy or otherwise acquire mining property, mines, mining claims and mineral lands with mill-sites, tunnel-sites and water rights, and shall have the right to acquire and hold title to the same either by lease bond, deed, mortgage or any other manner authorized by law, and shall have the right to sell, lease, bond or mortgage the same, and shall have the right to engage in the general business of mining and of acquiring all machinery and supplies necessary for the operation, development and management of the said properties, and shall have the right to acquire, own and operate any and all mills, smelters, lixiviation works, or to erect, construct, maintain and operate any and all works necessary for the handling, treatment and reduction of ores; to build houses, stores, warehouses, machine shops, saw-mills, and to operate the same; and shall have the right and authority to acquire water rights and water privileges, and to build and to construct and operate dams, reservoirs, ditches and canals, and to build and construct roads, tramways, electric railroads, cable roads, or any other kind of roads for the transportation of the products and business of said company, and shall have the right to erect, construct and maintain electric light plants and electric power, operated either by steam or water power, in connection with its business, and said company shall have the right to do all other acts and things as may be incident to or necessary for the profitable and economical carrying on of the general business of mining and smelting of ores, and for the development of its business and of the mineral interests in the locality in which its operations are carried on.

Article 4.

146 The time of the commencement of this corporation shall be the date of the filing of these Articles of Incorporation in the office of the Secretary of New Mexico, and the termination thereof shall be fifty years from that date.

Article 5.

The affairs of this corporation shall be conducted and managed by a board of five directors to be elected from among the stockholders of this corporation at the annual stockholders' meeting, which annual meeting shall be held in either of the offices of said company, and at such time after the first three months as may be prescribed by the by-laws of said company.

The officers of said company shall consist of a president, vice-president, secretary, treasurer, general manager and such other officers or agents as may be established from time to time by the Board of Directors either by by-laws or resolution.

The president and vice president shall be selected from the Board of Directors. The other officers above named, or any other officers or agents established or maintained by said company, may be selected from persons other than the Board of Directors.

The affairs of the corporation shall be conducted for the first three months from the time of its commencement and until their successors are selected and qualified, by the following named incorporators: Milton George, Josiah S. Tilden, Paul L. Krouse and John M. Rice.

Article 6.

The principal office and place of business for the transaction of the business affairs of said company shall be, and is hereby established, at Parsons, in the County of Lincoln, Territory of New Mexico. The principal office for the transmission of the financial affairs of said company shall be, and is hereby established in the City 147 of Chicago, State of Illinois. It is also provided and understood that meetings of the Board of Directors of said Company, either regular or special, may be held at its office in the said town of Parsons, Lincoln County, Territory of New Mexico, or in the said City of Chicago, Cook County, State of Illinois, or in the town of Capitan, Lincoln County, Territory of New Mexico; and it is also provided that meetings of the Board of Directors of said company may be held in any other town or place in the Territory of New Mexico, on resolution duly adopted by the Board of Directors, fixing the time and place of said meeting, and notice thereof to each member of the Board.

Article 7.

The capital stock of this company shall be forever non assessable, and each certificate of stock thereof shall state upon its face the number of shares represented thereby and that said stock is fully paid and non-assessable.

Article 8.

The private property of the stockholders of this corporation shall be exempt from the debts of the corporation.

Article 9.

The Board of Directors of this corporation shall have the right to adopt such by-laws as may be necessary for the government of its business and for the transaction of its affairs, and shall have the right to create such officers, or superintendents, or managers, or any other officers, as may be necessary for the conduct of its business, and to provide the manner for the execution of the duties of its officers and agents.

Article 10.

These articles of incorporation may be amended at any 148 annual or special meeting of the stockholders of said Company, called for that purpose by a two-thirds vote of the stock issued.

In witness whereof we, the said persons above named, original incorporators, have hereunto set our hands and seals this 28th day of May A. D. 1902.

(Signed)

_____. [SEAL.]
_____. [SEAL.]
_____. [SEAL.]
_____. [SEAL.]
_____. [SEAL.]

STATE OF ILLINOIS,
County of Cook:

Be it remembered that on this 28th day of May, 1902, before me John A. Cooke, Clerk of the Circuit Court in and for the County of Cook, and the State of Illinois, the same being a Court of Record, personally appeared *before me* Milton George and Josiah S. Tilden, of said County and State, and John M. Rice, County of Lincoln in the Territory of New Mexico, being a majority of the original incorporators of said Company and members of the Board of Directors thereof, each being personally known to me to be the same persons who signed, sealed and executed the above and foregoing amended articles of incorporation, and each for himself and not one for the other, acknowledged that he signed, sealed and executed said amended articles of incorporation as his free act and deed for the uses and purposes therein set forth.

Witness my hand and official seal this day and year above written.

(Signed)

JOHN A. COOKE,
Clerk of the Circuit Court.

149 STATE OF ILLINOIS,
County of Cook:

I, John A. Cooke, Clerk of the Circuit Court of Cook County, in the State of Illinois, (said Court being a Court of Record) do hereby

certify that the Honorable Elbridge Haney, whose name is subscribed to the annexed and foregoing certificate of acknowledgment was, at the time of the signing thereof, and now is, one of the Judges of said Circuit Court, duly elected, commissioned and qualified and that his said signature is genuine.

In witness whereof I have signed my name and affixed the seal of said Circuit Court at my office in the City of Chicago, in said Cook County, this 28th day of May 1902.

JOHN A. COOKE, *Clerk.*

STATE OF ILLINOIS,
County of Cook:

I, Elbridge Haney, Chief Justice of the Circuit Court of Cook County, in the State of Illinois, hereby certify that John A. Cooke, who signed the above certificate, was at the time of signing the same, and is now, Clerk of the said Circuit Court of Cook County, duly commissioned and qualified; that said Court is a Court of record having a Clerk and seal; that said attestation is in due form and by the proper officer, according to the laws of the State of Illinois, and that the above signature of said Clerk is genuine.

Witness my hand and seal at Chicago, in said County of Cook, this 28th day of May A. D. 1902.

[SEAL.] ELBRIDGE HANEY,
Chief Justice of the Circuit Court of Cook County.

Endorsed: Amended Articles of Incorporation of the Eagle Mining and Improvement Company.

This indenture made the 4th day of March A. D. 1902 between C. C. Parsons of the County of Jackson and State of Missouri and Allie Parsons his wife the party of the first part and H. B. Hamilton of the City and County of El Paso and the State of Texas, party of the second part:

Witnesseth, That the said party of the first part for and in consideration of the sum of Thirty-Five Hundred (\$3500.00) Dollars, lawful money of the United States, to him in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, has granted, bargained, sold, remised, conveyed and confirmed; and by these presents does grant, bargain, sell, release, remise, convey and confirm unto the said party of the second part and to his successors, heirs and assigns forever all my interest in the following described mine and mining property mining grounds, claims and lodes and their appurtenances, situated in the Bonito Mining District, County of Lincoln and Territory of New Mexico, to-wit: All my right, title and interest in and to that certain mine or mining claim and mill-site known and called the Hopeful Lode Mining Claim and Mill-site, being a one-third ($\frac{1}{3}$) interest therein, which said Hopeful Mine and mill-site are located in the Bonito Mining District, and are fully and more particularly described and

designated by the field notes and the certificate of the General Land Office, known and called Certificate No. 365, and known and designated by the Surveyor General as lots numbered 652A and 653B, embracing a part of Township ten (10) South, Range eleven (11) East, New Mexico Meridian, and is fully described in the patent issued by the government of the United States to R. C. Parsons, and dated August 3d, '92 and duly filed for record and recorded 151 in the Recorder's Office of Lincoln County, New Mexico in book "D" at page 521, and to which record reference is hereby made for a more full and complete description of the said mine. It being hereby intended to convey all of my right, title and interest which I hold in and to the said mine and mill-site, which I have acquired as one of the heirs of the said R. C. Parsons, deceased, and which I have acquired either by deed or inheritance.

Together with all the dips, spurs and angles, and also all the metals, ores, gold, silver and copper bearing quartz, rock and earth therein, and all the rights privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also all and singular the hereditaments and appurtenances and tenements thereto belonging or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part of, or to the said premises and every part and parcel thereof, with the appurtenances.

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part, his successors, heirs and assigns forever. And the said party of the first part and his heirs, the above described and hereby granted and released premises and every part and parcel thereof, with the appurtenances, unto the said party of the second part his successors, heirs and assigns, against the said party of the first part, and his heirs, and against all and every person or persons whomsoever (save and except the United States) lawfully claiming or to claim the same or any part thereof, shall and will warrant and by these presents forever defend.

152 In witness whereof the said party of the first part has hereunto set his hand and seal at Kansas City, Missouri, the day and year first above written.

Signed, sealed and delivered in the presence of;

(Signed)

C. C. PARSONS. [SEAL.]
ALLIE PARSONS. [SEAL.]

50c. Revenue Stamp.

STATE OF MISSOURI,
County of Jackson:

On this 4th day of March, A. D. 1902, before me the undersigned a Notary Public within and for the County of Jackson, State of Missouri, personally appeared C. C. Parsons and Allie Parsons his wife, to me known to be the persons described in and who executed

the foregoing instrument, and acknowledged to me that they executed the same as their free act and deed, and for the purposes and consideration therein expressed.

In witness whereof I have hereunto set my hand and affixed my seal of office the day and year last above written.

[N. P. SEAL.] (Signed) ULYSSES TURNER,
Notary Public within and for Jackson County, Mo.

My Commission expires October 9th, 1903.

Endorsed: Mining deed, from C. C. Parsons and wife to H. B. Hamilton. Exhibit "F." W. H. W. Territory of New Mexico, County of Lincoln, ss: Filed for record this 31st day of July, A. D. 1902, at 1:00 p. m., and recorded on the 2nd day of August, 1902, in book "U" of Deeds on page 114. Seal of the Probate Court. J. L. Analla, Probate Clerk and ex-Officio Recorder.

This indenture made the 15th day of April, A. D. 1901, between Mrs. Agnes Carpenter, widow, of Sumner, Iowa, the party of the first part and H. B. Hamilton of the City and County of El Paso and the State of Texas, party of the second part;

Witnesseth; that the said party of the first part, for and in consideration of the sum of Two Thousand Five Hundred Dollars (\$2500.00,) lawful money of the United States, to her in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, has granted, bargained, sold, remised, released, conveyed and confirmed, and by these presents does grant, bargain, sell, release, remise, convey and confirm unto the said party of the second part and to his successors, heirs and assigns forever all of my right in the following described mine and mining property, mining grounds, claims and lodes and their appurtenances, situated in the Bonito Mining District, County of Lincoln and Territory of New Mexico, to-wit: All my right, title and interest, being an undivided one-sixth (1-6) interest in and to all of that certain mine or mining claim known and called the Hopeful Lode Mining Claim and Millsite, situated in the Bonito Mining District, County of Lincoln and Territory of New Mexico, and being designated by mineral certificate No. 365 and designated by the Surveyor General as lots numbered 652A and 652B, embracing a portion of Township Ten (10) South of Range Eleven (11) East New Mexico Meridian, which said mining claim is the same property patented by the Government of the United States to R. C. Parsons by patent issued by the Government of the United States on August 3rd, 1892, and filed for record in the Recorder's Office of Lincoln

County, and duly recorded in Book "D" and page 522 of 154 the records of the Probate Clerk and Recorder of said County.

and to which record reference is hereby made for a full and complete description of said mining claim and it being hereby intended to convey all the interest I have in said mine, acquired by inheritance as one of the heirs of the said R. C. Parsons, Together

with all the dips, spurs and angles and all the metals, ores, gold, silver and copper bearing quartz, rock and earth therein, and all the rights and privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part of, in or to the said premises, and every part and parcel thereof;

To have and to hold all and singular the above mentioned and described premises, together with the privileges and appurtenances thereto incident, unto the said party of the second part, his successors, heirs and assigns forever. And the said party of the first part, and her heirs the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his successors, heirs and assigns, against the said party of the first part and her heirs (save and except the United States) lawfully claiming or to claim the same or any part thereof, shall and will warrant and by these presents forever defend.

In witness whereof the said party of the first part has hereunto set her hand and seal, at Sumner, Iowa, the day and year first above written.

(Signed)

AGNES CARPENTER.

155 Signed, sealed and delivered in the presence of

MRS. E. A. WISNER.

C. G. CARPENTER.

(Revenue Stamps \$2.50.)

STATE OF IOWA,
County of Bremer:

On the 15th day of April, A. D. 1901, before me the undersigned a Notary Public within and for said County of Bremer, State of Iowa, personally appeared Mrs. Agnes Carpenter, widow, to me known to be the person described in and who executed the foregoing instrument, and acknowledge to me that she executed the same as her free act and deed and for the purpose and consideration therein expressed.

In witness whereof I have hereunto set my hand and affixed my seal of office, the day and year last above written.

[N. P. SEAL.] (Signed) JOSIAH CARPENTER,
Notary Public.

Endorsed: Mining Deed. Mrs. Agnes Carpenter to H. B. Hamilton. "Exhibit G." W. H. W. Territory of New Mexico, County of Lincoln. Filed for record this 31st day of July, A. D. 1902, at 1 p. m. and recorded on the 2nd day of August, 1902, in Book "U" of Deeds on page 116. Seal of probate clerk. (Signed) J. L. Analla, Probate Clerk and ex-officio recorder.

Articles of Incorporation of the Eagle Mining & Improvement Company.

Know all men by these presents: That we, Milton George and Eugene C. Knight and Josiah S. Tilden, of the City of Chicago, County of Cook, State of Illinois, and Paul L. Krouse and John M. Rice, of the County of Lincoln, Territory of New Mexico, have associated themselves together for the purpose of forming and organizing a corporation for the transaction of business in the Territory of New Mexico, and for that purpose do hereby make, state, acknowledge, file and adopt the following Articles of Incorporation of said Company, under the laws of the Territory of New Mexico.

*Charter.***Article 1.**

The name of this corporation and body politic shall be and is the Eagle Mining and Improvement Company, by which name it shall be known and under which it shall transact all of its business.

Article 2.

The amount of capital stock of this corporation shall be the sum of Ten Million Dollars, divided into one hundred thousand shares, of the par value of One Hundred Dollars per share.

Article 3.

This company or corporation is formed for the purpose of engaging in the following lines of business, to-wit: It shall have the right and authority to lease, bond, buy or otherwise acquire mining property, mines, mining claims and mineral lands, with mill-sites, tunnel sites and water rights, and shall have the right to acquire and 157 hold title to the same either by lease, bond, deed, mortgage or any other manner authorized by law, and shall have the right to sell, lease, bond or mortgage the same, and shall have the right to engage in the general business of mining and of acquiring all machinery and supplies necessary for the operation, development and management of the said properties, and shall have the right to acquire, own and operate any and all mills, smelters, lixiviation works, to erect, construct maintain and operate any and all works necessary for the handling, treatment and reduction of ores; to build houses, stores, warehouses, machine shops, saw-mills and to operate the same; and shall have the right and authority to acquire water rights and water privileges and to build and to construct and to operate dams, reservoirs, ditches and canals, and to build and construct roads, tramways, electric roads, cable roads, and any other kind of roads for the transportation of the products and business of said company; and shall have the right to erect, construct and main-

tain electric light plants and electric light power operated either by steam or water power, in connection with its business; and said company shall have the right to do all such other acts and things as may be incident to or necessary for the profitable and economical carrying on of the general business of mining and smelting ores and for the development of its business, and of the mineral interests in the locality in which its operations are carried on.

Article 4.

The time of the commencement of this corporation shall be the date of the filing of these Articles of Incorporation in the office of the Secretary of New Mexico, and the termination thereof shall be fifty years from that date.

158

Article 5.

The affairs of this corporation shall be conducted and managed by a board of five directors, to be elected from the stockholders of the corporation at the annual stockholders' meeting, which said annual meeting shall be held in either of the offices of said company and at such time after the first three months as may be prescribed by the by-laws of said company.

The officers of said company shall consist of a president, vice-president, secretary, treasurer, general manager and such other officers or agents as may be established from time to time by the Board of Directors, either by by-laws or resolution.

The affairs of this corporation shall be conducted for the first three months from the time of its commencement, and until their successors are selected and qualified, by the following named incorporators: Milton George and Eugene C. Knight and Josiah S. Tilden and Paul L. Krouse and John M. Rice.

Article 6.

The principal office and place of business for the transaction of the business affairs of said company shall be, and is hereby established at Parsons, in the County of Lincoln, Territory of New Mexico. The principal office for the transaction of the financial affairs of said company shall be, and is hereby established, in the City of Chicago, County of Cook, State of Illinois.

It is also provided and understood that meetings of the Board of Directors of said Company, either regular or special, may be held at its office in the said town of Parsons, Lincoln County, Territory of New Mexico, or in the said City of Chicago, Cook County, State of Illinois, or in the town of Capitan, Lincoln County, Territory of

159 New Mexico; and it is also provided that meetings of the Board of Directors of said Company may be held in any other town or place in the Territory of New Mexico, on resolution duly adopted by the Board of Directors, fixing the time and place of said meeting, and notice thereof to each member of the Board.

Article 7.

The capital stock of this corporation shall be forever non-assessable, and each certificate of stock thereof shall state upon its face the

number of shares represented thereby, and that said stock is fully paid and non-assessable.

Article 8.

The private property of the stockholders of this corporation shall be exempt from the debts of the corporation.

Article 9.

The Board of Directors of this corporation shall have the right to adopt such by-laws as may be necessary for the government of its business and for the transaction of its affairs, and shall have the right to create such officers, or superintendents, or managers, or any other officers as may be necessary for the conduct of its business, and to provide the manner for the execution of the duties of its officers and agents.

Article 10.

These articles of incorporation may be amended at any annual or special meeting of the stockholders of said Company, called for that purpose, by a two-thirds vote of the stock issued.

In witness whereof we, the said incorporators have hereunto set our hands and seals this 16th day of May, A. D. 1901.

(Signed)

PAUL L. KROUSE.

[SEAL.]

JOHN M. RICE.

[SEAL.]

MILTON GEORGE.

[SEAL.]

JOSIAH S. TILDEN.

[SEAL.]

EUGENE C. KNIGHT.

[SEAL.]

160 TERRITORY OF NEW MEXICO,
County of Lincoln, ss:

Be it Remembered that on this 16th day of May, A. D. 1901, before me a notary public in and for the County of Lincoln, in the Territory of New Mexico, personally appeared John M. Rice and Paul L. Krouse, each being personally known to be the same person who signed, sealed and executed the foregoing Articles of Incorporation and acknowledged to me that he signed, sealed and executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal at my office this 16th day of May, A. D. 1901.

[N. P. SEAL.]

(Signed)

D. J. M. A. JEWETT,

Notary Public.

THE STATE OF ILLINOIS,
County of Cook:

Be it Remembered that on this 13th day of July before me Simeon W. King, a commissioner of deeds for the Territory of New Mexico, duly appointed and qualified, personally appeared Milton George and Josiah S. Tilden and Eugene C. Knight, of said County of

Cook, in the State of Illinois, each being personally known to me to be the same persons who signed, sealed and executed the above foregoing Articles of Incorporation, and each for himself and not one for the other, acknowledged that he signed, sealed and executed said Articles of Incorporation as his free act and deed for the uses and purposes therein set forth.

Witness my hand and official seal this day and year above written.

(Signed)

[SEAL.]

SIMEON W. KING,
*A Commissioner of Deeds for the Territory
of New Mexico, Residing at Chicago, in
the County of Cook and State of Illinois.*

161

"EXHIBIT I." W. H. W.

By-Laws of the Eagle Mining and Improvement Company.

Article 3.

SEC. 7. The General Manager of the said company shall have the full and complete control of all the business affairs of said company in the management of its mines and reduction works in the County of Lincoln and Territory of New Mexico, and elsewhere. He shall have the right to purchase all machinery, supplies and property necessary for the conduct and management of the business of said company, and shall generally have charge of all its business affairs in the operation and management of its property, and shall make his report to the Board of Directors from time to time when required.

"EXHIBIT J." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, July 20th, 1901.

Hon. J. W. Raynolds, Secretary of the Territory, Santa Fe, New Mexico.

DEAR SIR: I enclose you herewith Articles of Incorporation of the Eagle Mining and Improvement Company. Also my draft for \$530.00 to cover the fee for filing the same. As I understand it, this is sufficient to cover the fees. The capitalization of the Company is Ten Million (\$10,000,000.00) Dollars. And is also sufficient to cover the cost of certifying to the copies which I herein send you. Please file the Articles at once and mail one copy to me here, and the other remaining copies to Mr. J. M. Rice, 162 Parsons, Lincoln County, New Mexico, Please attend to this without delay.

If the amount herein enclosed is not sufficient, please file the Articles anyway and send the copies and let me know the amount and I will remit it.

Yours truly,

— — —

Enclosures.

"EXHIBIT J." W. H. W.

Office of the Secretary,

SANTA FE, N. M. 7-29-01.

H. B. Hamilton, Esq., El Paso, Texas.

DEAR SIR: Yours of the 26th with enclosures received. I regret being obliged to return the papers because of faulty execution.

The Chicago gentlemen acknowledge the paper before one Simeon W. King, who purports to be a Comm'r. of Deeds for N. M. in Ill., but a search of the records back twenty years, fails to show any such appointment.

Now, reference to Sec. 415 of the Compiled Laws of 1897 will show how these papers should be acknowledged, and reference to Sec. 2628, et seq., shows who may be qualified Comm'r's. of Deeds. The latter are commissioned for two years; hence Mr. King can hardly show a saving clause, unless the records of this office are some way at fault. If such is the case I would be pleased to be informed at once.

One of the other copies may be acknowledged before a Notary, in which event the Notary should be certified from proper authority in his home State.

The amount sent for fees (\$530.00) is exactly correct and will be held pending receipt of corrected papers, unless you request 163 that it be returned. Regretting the delay, but assuring you that I think it will be in the ultimate interest of your clients,

I am

Yours truly,

J. W. RAYNOLDS,
Secretary of New Mexico.

"EXHIBIT J." W. H. W.

OFFICE OF THE SECRETARY,
SANTA FE, N. M., August 9th, 1901.

H. B. Hamilton, Esq., El Paso, Texas.

DEAR SIR: Your communication of the second was received during my absence from the city and referred by my assistant to the Solicitor General, and under his direction you were wired that the articles of the Eagle Mining and Improvement Company had been filed, subject to "proof of authority of Commissioner of Deeds King."

Upon my return I instituted an exhaustive search among the old papers filed here, and finally found the oath of office of Mr. King as Commissioner of Deeds for New Mexico, dated January 22, 1868; tracing this back, I found in the record under date January 7, 1868, the following:

"The Governor this day appointed Simeon W. King of Chicago, a Notary Public."

The above quotation is probably merely a clerical error and, no doubt, Mr. King was appointed a Commissioner of Deeds, although the paper containing his appointment cannot be found. Further than this, his oath of office filed here was subscribed before a Notary Public, whereas, the law distinctly states that the same should be subscribed before some judge or clerk of record in the Commissioners home state, and certified under the hand and seal of the person taking it. There are some further requirements in regard to certification in regard to the commissioner's signature which have been fulfilled in an extremely lax manner.

164 Now, the commissions issued from this office, state in the clearest possible English that they are good during two years from the date of qualification, but waiving this point, it is certain that a commissioner is not qualified at all until he has complied with the exact letter of the law, which was not done in this case as I have mentioned above.

The Solicitor General States:

"It will be seen that the filing of the oath, signature and seal is a qualification of the office prerequisite to the exercise of any of its functions, * * * in other words, the certificate is insufficient to justify you in filing the Articles, but unless the Commissioner shows that he was qualified according to law, he must so qualify, or there must be a new acknowledgment."

Therefore, while I have filed your Articles as requested, I am obliged to hold the same in this office until Mr. King takes the proper steps for qualifying as the law requires which, as I understand it, will validate his acknowledgement in the case in question. I am notifying him to-day to this effect.

Yours truly,

J. W. RAYNOLDS,
Secretary of New Mexico.

"EXHIBIT J." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, *August 15th, 1901.*

Hon. J. W. Raynolds, Secretary of the Territory, Santa Fe, New Mexico.

165 MY DEAR SIR: Yours received and explanation of delay of course is satisfactory. I received word from Mr. King and

I presume he has sent you ere this the qualification necessary, and that you will now be able to issue the charter.

I send you herein the retained copy, which you will please certify and return to me when you send out the others. You can send all of them to me, which you had perhaps better do if you have not already sent them.

I should like very much to have had the record of the filing and the Charter dated as on the 29th of July, instead of the 5th of

August, a week later, as this was the day upon which you first received the papers, but of course if you cannot do this, then we will take them as of the 5th as stated in your last letter.

When the Charter is issued upon the filing of Mr. King's oath of office, I presume of course the conditions attached at the time of the original filing, if made a part of the filing, will be erased or left off, that is; "On condition that King qualified." Of course my object is that the filing and the record show an unconditional filing.

Hoping the matter will be adjusted and that we will soon receive the Charter, I am

Yours truly,

Enclosure.

OFFICE OF THE SECRETARY,
SANTA FE, NEW MEX., August 19th, 1901.

Hon. H. B. Hamilton, El Paso, Texas.

DEAR SIR: Mr. King having qualified this day as a Commissioner of Deeds, I make haste to forward the papers in the matter of Eagle Mining & Improvement Company. You will find enclosed, therefore, certificate of filing and four certified copies as requested. 166 On this corporation the fees are:

Filing	\$520.00
Four certified copies	10.00
	530.00

covered by New York exchange for that amount.

Of course, the articles now stand upon all records without any condition or qualification. As there were some errors in the three copies you forwarded originally for certification, I had new ones made before certifying them, but did not take time to make a new copy in place of the last one forwarded, thinking that you might object to any further delays.

Hoping this will be satisfactory, I am

Yours truly,
Ene.

J. W. RAYNOLDS,
Secretary of New Mexico.

"EXHIBIT J." W. H. W.

OFFICE OF THE SECRETARY, SANTA FE, N. M., Sept. 26, 1901.

H. B. Hamilton, Esq., Mundy Building, El Paso, Texas.

DEAR SIR: Please accept thanks for yours of the 26th enclosing balance due for filing proof of publication of the Eagle Mining and Improvement Co.

Yours truly.

J. W. RAYNOLDS,
Secretary of N. M.

167

"EXHIBIT J." W. H. W.

OFFICE OF THE SECRETARY, SANTA FE, N. M., June 5, 1902.

Eagle Mining & Improvement Co.

Hon H. B. Hamilton, Santa Fe.

SIR: Enclosed please find certificate of filing and two certified copies of Amended Articles of Incorporation of the Company named above.

The filing fee of \$10.00 and \$6.00 for the certified copies have been paid.

Respectfully,
Enes.

J. W. RAYNOLDS,
Secretary of New Mexico.

"EXHIBIT K." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, Sept. 26th, 1902.

Mr. R. C. Sturgeon, Room 314, Tacoma Building, Chicago, Ill.

DEAR STURGEON: I received your letter with that of Rice's requesting me to come to Chicago. I shall leave here tomorrow night, unless Mr. Rice comes down here in the morning. Should he come, I shall leave Sunday night and be in Chicago Tuesday night or Wednesday morning. I wish to see Rice before going, if I can. I

168 want to see him in reference to the contract to the Old Abe Mine. I understand he has made the first payment, I presume this was done while you were there, however, and the contract provided for the protection of the company with reference to the pending suit affecting the one-fourth interest in the Old Abe. Since I saw you I have talked to the counsel representing this suit against the Old Abe and they have assured me that they intend to prosecute the appeal now pending in the Supreme Court of the United States. While I have no faith in their succeeding and do not feel that there is much danger yet no one can tell the result of a law suit and think it safe for the company to protect itself against the possibility of a reversal of this decree. They can do this by protecting themselves on the last payment due upon the mine. I will go over this fully with you when I reach Chicago. The crowd who are here from Indiana and Chicago are full of enthusiasm over the property and seem to be disposed to require the mill upon the Hopeful. They seem to have their attention directed to that and in fact expressed a strong inclination to have the money expended in that direction for erecting the mill on the Hopeful. Mr. Anderson is here and I have talked the matter over with him and I am confident these people will put up from two hundred to two hundred and fifty thousand dollars, provided they can make arrange-

ments to suit them. Mr. Anderson told me of the conversation between you and Mr. Rice and he with reference to the matter and its exactly on the line with which they discussed it with me and I am inclined to think that if you would propose to these people to give them say, one million dollars at twenty-five cents on the dollar, if they insist upon it, that it would be a good plan to do so. They might, however, also want a representative from the Board; this, I take it, can be gotten them as Mr. Tilden probably would 169 be willing to resign in their favor. I simply throw out these suggestions to you as matters that impressed themselves upon me, in talking over the matter with Richards and his people. We can go over the matter fully when I see you in Chicago.

The strike on the Helen Ray is certainly a fortunate one at this juncture. I feel that you are getting things in splendid shape and that the matter will work out all right. No more until I see you.

Yours very truly,

P. S.—Our friend McKie here in El Paso is making considerable stir over the fact that he has not received his money as agreed between he and Ulrick. He will probably file suit, but this suit while it cannot particularly affect the American Gold Mining Company except to hold up the money due Dolph and Robinson; this is the least of the difficulties as from what I can learn in the last few days he threatens all sorts of things if the matter is not adjusted. I will try and see Ulrich and Rice in White Oaks on my way to Chicago, if Rice does not come here tomorrow, and explain to me the situation. We want to get Ulrick to fix this matter up.

Yours,

"EXHIBIT K." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, October 22nd, 1902.

R. C. Sturgeon, Sec. Eagle Mining Co., Room 314 Tacoma Building, Chicago, Illinois.

DEAR STURGEON: I have just returned from Parsons and 170 Nogal this morning, where I went to prepare the conveyance to the mines and to report to Mr. Rice with reference to the property to which the Company now have title. With the aid of the stenographer on Sunday, Monday and Tuesday I have gotten up a properly acknowledged conveyance to the Company covering in the neighborhood of 160 claims. This will be a title of the property to the Company of about 170 claims. The deeds executed and acknowledged with the location notices and other papers, have been taken up by Mr. Rice, which he will bring with him to Chicago, should he come. If he does not come to Chicago, he will forward them to you. I drew a rough draft of his report which, of course, he will modify, take from and add to, in such manner as he and you may think advisable. You will observe when these papers are

turned over to you they are in separate packages. There are several deeds enclosed with the location notices affecting that particular property in separate packages. The location notices you will file with the papers of the Company in your office, and the several deeds you will take and transmit at once to the probate clerk and recorder of deeds in Lincoln County, for record. We had no mining deeds at the mine, but only quit claim deeds. I started out to have the deeds all written out according to the forms of a regular mining deed, but after writing one or two I discovered it would be impossible with the character of machinery we had at the mine to do this work in this form and get it ready for Mr. Rice to take with him to Chicago. So I drew several of the deeds on ordinary quit claim deeds, which is ordinarily sufficient to pass whatever title the grantor may have. Of course, the mines are unpatented and the owners cannot give warranty deeds. Of course, they may give a warranty deed against everybody except the Government and there is a covenant of this character in the mining deeds. These quit claim

171 deeds will pass all the title which the owners have in mines, to the Company. This will cover, I think, what we want for the present. Of course, the object of the Company will be as soon as possible, to acquire patents from the Government to all of this property. With these 170 claims added to the Company it seems that the prospective purchasers ought to be satisfied that the company have some property upon which to base the issuance of this stock.

I hope you and Mr. Rice will be able to get matters adjusted in Chicago with reference to such matters as may need adjustment. If I am needed anywhere along the line, you know where to find me. I believe, while I was in Chicago, we had some discussion with reference to the Johnson matter. I had a little talk with Mr. Rice about it and I stated to him in substance about what I stated to you, that we wanted to avoid getting the company complicated in any way in this matter and it was a question as to whether the Company or its Board of Directors would have the right to offer one million dollars worth of the stock for sale and to realize anything less therefrom than the market value of the stock, less a reasonable commission for the sale, in other words, what I wish to make plain is that the Board of Directors are responsible for all of the treasury stock and it is simpler therefore to sell it for the best price obtainable and to turn into the treasury the proceeds of the sale of this stock, less what would be regarded as a reasonable commission for the sale of the stock. As to whether the proposition may be desirable or expedient, or whether it may be advantageous to the Company to make it, must be considered also in conjunction with the legal aspect of the matter and the power of the Company to make it. Do not understand

172 me as raising any objection to the proposed arrangement with Mr. Johnson. I am only looking at the matter from a legal standpoint and want to protect the Board from taking any steps which might be regarded as legally questionable and which might be called in question by some two by four dissatisfied stockholder. I am with you and Mr. Rice, of course, on any proposition

which may be to the interest of the company, but of course we have to be careful as there are several hundred stockholders behind it and we want to keep within line. Anything I can do, or any information you want, let me know.

Your Truly,

“EXHIBIT K.” W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, November 14th, 1902.

Mr. R. C. Sturgeon, Room 314 Tacoma Building, Chicago, Ill.

DEAR STURGEON: Mr. Dickenson came down from the mine last night. Mr. Rice wired me from Carrizozo to meet him at the hotel, which I did last night. I have known Mr. Dickenson for a number of years, he having been formerly connected with the Smelter Company at Socorro, New Mexico, and we having lived in the same town. He went over the mining property, the Old Abe, Hopeful, etc., and he is more than pleased with its outlook. He says it is of a magnitude far beyond what he had anticipated. He went over the matter of the property and the titles, etc., with me. I explained to him the situation as to the titles, which he seemed to wish to know.

173 I told him the extension had been granted on the payment of the Old Abe, at least for a short time, when I had no doubt it could be met. He tells me he is quite sure he can make some favorable headway on his return to Chicago, as he told me of some parties who, he thinks, are willing to invest in an enterprise of this character, upon his recommendation. At least he feels that he can induce them to make further investigations, if they desire, which will lead to other investment. He is an excellent gentleman, reliable, and I think understands his business thoroughly. He had the entire confidence of the American Smelter Company while he was with them at Socorro.

Mr. Ferguson was here a few days ago and is feeling very nervous and ugly over the delay in payment on the Old Abe, and served notice on Rice that he would demand a forfeiture and possession on the 20th if the money was not paid. I rather talked him out of this, that is, I think he agreed with me that he would be satisfied with a partial payment or rather a partial payment could be made, and in a way that would relieve the company of him and probably secure an extension for you, if you cannot pay it all. I presume, however, that you and Mr. Rice will take care of the matter without my assistance as you have done so far. I only write you this that you may be advised as to his feelings in the matter. I am quite well acquainted with Mr. Ferguson and he talked over the whole matter with me very fully and I tried to dissuade him from his course assuring him that he would get the money by a little delay.

I do not know how the papers stand, as Mr. Rice had them drawn in my absence, and without notifying me or asking me to supervise them or draw them. I have asked him a number of times if he de-

174 sired me to investigate the papers and see to this transaction. He stated that he did not think it necessary this time for me to do so, so I know little or nothing about the manner of the contract which he has with the company, except in a general way.

I think the company certainly should be in some way protected against the possibility of an unfavorable result of that suit in the Supreme Court of the United States, unless, however, there be something in the present contract protecting the company against that, it would be probably difficult to get anything done now as they have received fifty thousand dollars and will probably soon receive the other fifty thousand, and will be independent and disinclined to do anything with reference to the one-fourth in litigation, but will let the company assume the risk of taking care of that suit and its result. If that goes to the Supreme Court of the United States, if it will or has, the company, of course, would have to look after it or let it go by default. As I have not been consulted in this matter, however, I know nothing about what the company has done and simply offer these suggestions to you. I expect to see Mr. Rice in a few days and talk the matter over with him.

Yours truly,

— — —
H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, November 21st, 1902.

Mr. R. C. Sturgeon, Room 314 Tacoma Building, Chicago, Ill.

DEAR STURGEON: Your letter received. I have at one time explained to Mr. Rice the condition as I understand it, of a suit against the Old Abe mine, or rather I told him that such a suit had been brought and was pending. I voluntarily told him this, after 175 I had learned that he had contracted for a purchase of the mine. He never consulted me or asked me any questions about the title or the character of the contract, which he should make with the Old Abe Company. In my conversation with Ferguson he told me at one time, that they *they* would agree to carry on the litigation, but as there is no provision for such action on their part on the contract, which has been made by Rice for the purchase of the mine of course they will not do it, at least Ferguson will not be now disposed to do it, as I take it. This matter, of course, should have been looked into and understood before the contract was made, which I certainly should have done had I been advised about it. I am ready and willing to go at any time to White Oaks and look into the contract which the company have for the purchase of the Old Abe, and in fact, as I have stated to you before, I have offered several times to do so. If the company have as contract for the purchase of the Old Abe of the character mentioned in your letter, that is if the Eagle Company have agreed to purchase and acquire the stock of the Old Abe Company and if it is agreed that the Old Abe Company, or rather the old board of the Old Abe Company shall resign and you people take their places in the new board, it would seem to me

that this is a singular sort of agreement and one that the Eagle Company, as a corporation have no power to make. The Eagle Company cannot in any way make any such contract. The only kind of contract they can make is a contract for the purchase of the Old Abe mine and have the property deeded from the Old Abe Company to the Eagle Company, then as a matter of protection and precaution to the Eagle Company the stock of the Old Abe can be transferred by each of the stockholders to you, Mr. Rice, or any one of you, so that it may be held and avoid possibility of the stock going 176 into the hands of other persons. The Eagle Company does not in any way or manner want to become the owner of the Old Abe Company or its stock, but it does want to buy the Old Abe mines and its stock can be held intact by Mr. Rice, yourself or both of you, so as to have the stock under your control, where it would not be possible for it to pass outside. The Eagle Company, therefore, in other words would become the owner of the Old Abe Mine and all of its property and the Old Abe Company would remain intact with its stock in your possession and Mr. Rice and any property, all of the property having passed to the Eagle Company. The stockholders and directors of the Old Abe Company must pass resolutions authorizing the conveyance of the Old Abe Mine and all of its property to the Eagle Mining Company and this must be assented to by all of the stockholders and the directors in order to vest the title properly in the Eagle Company. I attempted to explain this to Mr. Rice at one time, but he seems to have gotten some impression from Mr. Huitt that this was not necessary, but I know it is necessary if the Eagle Company shall be required to give title to the Old Abe Mine. As I say I do not know the nature of his contract as I have never seen it. I presume he will write me when he gets your letter, and I will go to White Oaks and examine it.

As to the suit pending in the Supreme Court I will have to go to Santa Fe to ascertain as to that. I will go there and look that up and will write you its condition and as to whether we will have to prepare to make a fight.

I hope you are getting the matter adjusted with Mr. Ferguson. My plan in satisfying Mr. Ferguson is this. If you cannot pay the whole Fifty Thousand Dollars, to pay Twenty-Five Thousand Dollars in on the Fifty and arrange with Huitt and others outside 177 of Ferguson, they being willing to wait and give you time, that they should pay over this Twenty-Five Thousand to Ferguson and this would close up all of his interest in the property and would leave you to consummate the balance of the payments and delay with Huitt and others who are disposed to be friendly to you. At least Mr. Rice thinks they are friendly. So far as I am personally concerned I have no confidence in the personal friendship of any of these people beyond the strict letter of their contract; what I mean to say is that in my judgment you need not anticipate receiving many favors from any of them beyond what the law would give you in your contract. That is why it is important in dealing with these people to be protected in your papers, when they are drawn. I hope, however, the matter may be adjusted on an amicable basis, without any friction or trouble. I will certainly do all I can to aid you to

this end. I think it would be unwise to buy out Huitt and these people and leave Ferguson in. My idea would be to reverse this proposition; but out Ferguson and leave the other in, if you only have money sufficient to pay a part at this time. Ferguson is there dis-satisfied, as he certainly will be, might give us a whole lot of trouble which he certainly would not hesitate to do. If I could see you, I could suggest a plan by which the matter could be adjusted, but of course you are as familiar with the situation as I am and can probably arrange it.

I hope you are getting along better with the sale of stock. If you need me, call on me at any time.

I suggested to Mr. Dickenson that if I could help him interest these Chicago people and get them into the deal I would do so. He did not know but what he might need me to go to Chicago, but I presume this will not be necessary.

Very truly yours,

Diet.

178

"EXHIBIT K." W. H. W.

Eagle Mining and Improvement Company,
314 Tacoma Building.

CHICAGO, ILL., Dec. 13th, 1902.

Hon. H. B. Hamilton, El Paso, Texas.

DEAR JUDGE: I enclose you a letter which I received from Mr. McKie's attorneys with reference to the Helen Rae matter. I answered this letter over the signature of John Monk, the present Secretary of the Company, stating that the writer knew nothing about the matter and had therefore referred to the general counsel of the company, who is yourself. I did not enter into the discussion personally over my own name, because you understand that the Helen Rae property was purchased by me, and the papers from Robertson and Dolph, which are in escrow with Ulrich, convey title to me, and I shall convey title to the Company.

If you take the matter up with these lawyers at all, you are advised that prior to the time that Mr. Gaylord even talked to them about purchasing the Helen Rae, McKie had sent all papers back to Robertson, and was not at that time even the authorized agent for the sale of the property. Later on I went to Scranton myself with George Ulrick and bought the property myself. I am giving you these details and you can use them as you see fit. I leave for Parsons on Tuesday, and would be glad to meet you in White Oaks before I return, if you can spare the time.

Yours truly, and in haste.

STURGEON.

The American Gold Mining Co.,
No. 1019 Ashland Block, Chicago, Ill.

EL PASO, TEXAS, Dec. 2, 1902.

GENTLEMEN: We desire to notify you not to make any further payments to Robinson Bros., and Dolph on the Helen Rae Mine until the commission of Mr. Alva B. McKie, amounting to Fifteen Thousand Dollars (\$15,000.00) is paid. Mr. McKie opened negotiations with Mr. Rice and Mr. Gailard and in fact found a purchaser for the Helen Rae Mine, and would have closed the deal but for the fact that the owners of the mine did not act in good faith with him, and finally made a sale to you through other parties.

Mr. McKie carried out his part of the contract in every respect until the agency was taken away from him, and the property withdrawn for the sole purpose of preventing him from collecting his commission.

We will be glad to hear from you in reference to the situation and how you feel in this transaction. Certainly conduct of this kind on the part of mine owners, should not be encouraged.

Yours very truly,

CLARK, FALL, HAWKINS & FRANKLIN AND
M. W. STANTON,

Attorneys for Alva B. McKie.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, Dec. 23rd, 1902.

R. C. Sturgeon, Room 314 Tacoma Building, Chicago, Ill.

DEAR STURGEON: I regret that you could not make a visit to El Paso and that I was unable to see you before your return to Chicago. Was sorry to learn of your sickness and hope you are now better and ready for business. Your friend Mr. Randolph was here and I introduced him to the bank and he secured his money and they have now left. I understand that Mr. Rice returned to Chicago and that you will probably have a meeting of the Board while he is there. I am very much in need of money and would like to have my account for compensation adjusted with the company up to date as you know, they made me an allowance in October while there on account, five hundred of which you sent me. I have been with the company since its organization in July 1901, and while I have not been constantly employed in their services I have been ready and willing at all times to go where they wished me and I have, as you know, made a number of trips to Chicago and Kansas City and Santa Fe and also to the mines and have frequently left my office on short notice looking it up and being away from my

business here for two *two* weeks at a time. There never has been any understanding or agreement as to what my compensation was to be but in view of the nature of the business which we had to transact

181 in my absence in attending to it and the important matters we have had to adjust I presume it ought to be worth five

thousand dollars a year which up to January first would make the amount due me something like seven thousand five hundred dollars, less what I have received. I do not wish to be unreasonable in my charges, but you, as a lawyer, can appreciate something of the value of services of this character and know something of the importance and magnitude of the matters which have been adjusted. I wish you would take the matter up with the Board and have them dispose of it in some way that is satisfactory and send me a draft for some money as I am very much in need of it to meet some obligations which I have maturing the first of January.

I hope you will be successful in your arrangement with Mr. Grant. He called to see me when he was through and we had a pleasant visit together and went over the matters of the mill, mine, etc. He is very enthusiastic over the property.

Please let me hear from you.

Yours truly,

Dict. K.

"EXHIBIT K." W. H. W.

Eagle Mining & Improvement Company,
314 Tacoma Building.

CHICAGO, ILLS., Jan. 3rd, 1903.

Hon. H. B. Hamilton, El Paso, Texas.

MY DEAR JUDGE: Replying to your favor of the 23rd would say that since my arrival home, I have been very much under the weather, but am getting in shape to do business again. Mr. Rice and I leave for Denver tonight to see the Colorado Iron 182 Works Company with reference to a mill, and we will let you know the result of our trip upon our return.

I note what you say in regard to your compensation for the very important services you have rendered to this company since its inception, and I agree with you that the amount you name is reasonable enough. We have been very much hampered during the last sixty days for ready money, and are therefore not in a position right now to comply with your request for a remittance.

I have taken the matter up with Mr. Rice, however, and we have agreed that you should at least have some money on account at the earliest possible moment, and I will undertake to see that you get it as soon as possible. I hope to be able to do something on it as soon as I get back from Denver.

With my very kindest regards, and wishing you a happy and prosperous new year, I am

Very Truly Yours,

R. C. STURGEON.

"EXHIBIT K." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, Jan. 3d, 1903.

Mr. R. C. Sturgeon, Room 314 Tacoma Building, Chicago, Ill.

DEAR STURGEON: Mr. McKie has made his bond and filed his suit against Dolph and Robinson and the American Gold Mining Company for his commission arising out of the sale of the Helen Rae Mine to the American Gold Mining Company. He claims fifteen thousand dollars. He has or will garnishee the American Gold Mining Company and will seek to recover a judgment against it for the amount of his commission, provided, of course, he can succeed in obtaining his judgment first against Dolph and Robinson before he can get a judgment against the company. In view of this suit it will not be advisable, of course, for the company to settle it in full with Dolph and Robinson until this litigation is over.

I presume you received my letter with reference to my account against the companies, for services. I have not heard from you, but I presume you have likely gone to Denver.

I hope you will be able to get the contract made with the Colorado Iron Works for the construction of the plant upon the Hopeful Mine, and that you may be able to get matters connected with the Hopeful straightened out and the plant soon erected thereon. The matters of the Hopeful titles should be settled up at once as I have stated to you, Mr. Tilden and others of the company heretofore. This matter should be settled up. The parties who have claims upon the property are becoming dissatisfied with the delay, and are arranging a settlement, so I hope the company will use some of this money in closing this matter up.

Yours Truly,

Diet. K.

"EXHIBIT K." W. H. W.

Eagle Mining and Improvement Co.,
314 Tacoma Building.

CHICAGO, ILL., Jan. 12th, 1903.

Hon. H. B. Hamilton, El Paso, Texas.

DEAR JUDGE: Your favor of the 3rd Inst. was handed to me upon my return from Denver Saturday. I note what you say about 184 the McKie suit against Robertson and Dolph and I am of the opinion that McKie will not be able to recover.

Mr. Rice and I went over the mill situation in every detail with the Colorado Iron Works and came back full of facts and figures with reference to the construction of a large mill on the Eagle property at Parsons and an electric generating plant at White Oaks and a fifty stamp mill on the American. Of course there are a great many

conditions precedent to the erection of a mill at Parsons, but we have practically arranged for a fifty stamp mill at the American.

With reference to the claims against the Hopeful, would say that I have taken the matter up with Mr. Rice and we will get them adjusted at the very earliest possible moment, as well as your own matter referred to in a former letter.

During the last sixty days money has been extremely hard to get and we have been using it where necessity made it absolutely imperative. We have some matters pending here which will probably mature this week, and we may get hold of a good deal of money, unless our plans fail. We will keep you advised and you may depend upon it that you will be taken care of at the earliest possible moment. We had seven or eight thousand dollars in sight through Mr. Randolph, who I believe called on you recently in El Paso, but upon his return here he said he had got some information in El Paso or somewhere down there with reference to our property which made it absolutely impossible for him to recommend stock in our company to his friends. I can not find out what it was nor where he got his information. Have you any idea?

185 Will not write any more at present, but may have something to write you about in a day or two.

Very truly yours,

R. C. STURGEON.

"EXHIBIT K." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, January 16th, 1903.

R. C. Sturgeon, Esq., Room 314 Tacoma Building, Chicago, Ill.

MY DEAR STURGEON: I was glad to receive your letter on your return from Denver, containing the announcement that you had arranged a contract for the construction of a mill on the American, but sincerely regret that you could not have made some arrangements whereby a contract could have been let for the beginning of a plant on the Hopeful, even though it might start on a small scale at the beginning.

If the company and its friends could be able to announce that a contract had been let with the Colorado Iron Works for the construction of a mill, although only of 50 or 100 ton capacity, on the Parsons property, it would have been of incalculable value to the company in the sale of stock; it would have given confidence in quarters which seem to be shaky, and would have greatly stimulated both present and prospective stockholders.

I perhaps know more of the outside sentiment than you who are on the inside of the company. Both present and prospective stockholders have talked and written to me, and expressed themselves perhaps more freely and strongly on this subject to me than they would either to you or Mr. Rice.

186 No one has ever visited the property who has not expressed confidence in its magnitude and been impressed with the great value

at least of the Parsons property if a plant was erected thereon, and while I have explained to them that everything could not be done in a day, and that you were endeavoring to reach this result and would, as soon as it was possible to do so, begin the construction of a plant on the property, still they seem somewhat disappointed that this has not been done or is not being done.

While I know you and Mr. Rice cannot do impossibilities, and you have certainly done wonders in the way of raising money for this enterprise and I doubt if anyone else could have done what you and he have done in this direction, with no productive property to back it, yet I certainly think that nothing could be of more value to you in the sale of stock and in the raising of money than to be able to publish to the world that a contract had been let and that the work was going on for the construction of a plant on the Parsons' property. Is it not possible to make such a contract now or in the near future?

As to Mr. Randolph and his friend, who called here to see me, they both spoke in the highest terms of the property and feel it has a great future. They asked me specially as to the title to the properties and I told them exactly the situation as it is. It is not surprising, however, that they have run against some influences here of an adverse character. There is quite a feeling here in some quarters, which I have endeavored to keep down as much as I could, but nevertheless it exists, and it is possible they may have met some of it. You know at least some of the sources from which it came.

I might write you much more in the matter, and could tell 187 you much more if I could see you, but I presume it is unnecessary to do so.

I wish you would be able to push the matter now for the raising of money. I have been doing and desiring to do everything in my power to aid you in this matter and to help you whenever it is possible to do so.

I hope you will arrange to send me some money next week if you can. I am very much in need of it as I have some obligations which I must meet or suffer great loss.

I hope also that the Hopeful matter could be adjusted at the earliest possible date. As I stated long ago to Mr. George and Mr. Tilden, and I think perhaps to you, last summer in Chicago, it is highly important to the Company to get this matter adjusted and paid.

Wishing and hoping for your success in the matter and that I may hear from you in a few days, I remain.

Yours truly,

"EXHIBIT K." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, January 30th, 1903.

Mr. R. C. Sturgeon, Sec. Eagle Mining Co., Room 314 Tacoma Building, Chicago, Ill.

DEAR STURGEON: Some two weeks ago I wrote you with reference to sending me some money on account of my salary for the company.

I am in urgent need of the money and I had expected to get a remittance before this time. Can you not arrange to send me 188 a draft for a substantial amount to help me out? Please let me hear from you.

Yours truly,

Dict. K.

"EXHIBIT K.". W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, February 6th, 1903.

R. C. Sturgeon, Room 314, Tacoma Building, Chicago, Ill.

DEAR STURGEON: As stated to you sometime ago the suit of McKie vs. Dolph and Robinson, and the American Gold Mining Company has been filed. Writs have been issued and service for garnishment proceedings and attachments have been made against the American Gold Mining Company. Gaylor was here and turned the papers over to me. As service was made upon him in the absence of Mr. Rice, which under the laws would be good. They will levy or have levied the attachment upon the Helen Rae property, but of course will simply make a formal levy of the attachment and will not attempt to take possession of the property, or in any way interfere with our operations. They have served a writ of garnishment also upon the company which we will have to protect and answer. I shall enter the appearance of the company to the writ of garnishment in the next few days and be ready to answer when the proper time comes. It will be necessary for me to have a copy of the contract entered into between the American Gold Mining

Company and Dolph and Robinson, in order to intelligently and properly answer the garnishment proceedings and protect the company. I wish you would therefore have made and send me a copy of the contract which the American Gold Mining Company will draw with Dolph and Robinson. Of course, they can get no judgment against us at all, after getting judgment against Dolph and Robinson but we will have to protect ourselves and enter appearance and answer under the statute. I presume Dolph and Robinson will take steps and employ counsel to defend the suit at least I understand they intend to do so. I wish you would attend to this matter at once, so there may be no matters overlooked in preparing for our answer.

I had hoped to receive a letter and draft from you ere this and I hope to receive it in a few days. Arrange to send me as much as you can, because I must have some money. I know you have demands in various directions and it is hard to answer the call of everybody, but I hope you will manage to send me a draft as I am very much in need of money.

I would like also to hear how you are getting along and would like to know what the outlook is. Gaylord was here and says matters are moving along very well at the mine. There have been some rumors here of a change in the operations of the properties, as to a

consolidation of the two. It occurred to me some time ago that a consolidation of the entire enterprise and the two companies would be a good scheme, if it could be carried out, which I think it could. A consolidation of the two enterprises could be affected, I think, if it is desirable on the part of you gentlemen who are in the management, to do so. This could only be done, I think, successfully under the law by the organization of a new Company called say, the American Eagle Mining Company and bring about the consolidation

190 in this way, by getting the stockholders in each of the old companies to accept stock in the new and surrender their stock in the old, each company, in this instance would have to have meetings of their several stockholders and order a transfer of all the property in each of the old Companies to the new and accept stock in the new in lieu of the old. It seems to me that this might be a feasible plan and it could be carried out if the law of New Mexico was properly followed, without any injury or successful complaint on the part of anybody. I do not know that such a scheme is advisable, or that it is contemplated, but I simply throw out the suggestion.

Hope to hear from you by return mail and also to receive the draft.

Very truly,

Dict. K.

"EXHIBIT K." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, February 9th, 1903.

Mr. R. C. Sturgeon, Room 314 Tacoma Building, Chicago, Illinois.

DEAR STURGEON: In writing you last week in reference to the garnishment and attachment proceedings of Mr. McKie vs. Dolph and Robinson and the American Gold Mining Company I neglected to say to you that I think it would be wise not to pay Dolph and Robinson any money until the matter has been settled. The garnishment proceeding against us will require us to pay McKie any money which is due from us to Dolph and Robinson. And if you should make one or two payments on the Helen Rae and 191 should, for any reason, *but* unable to pay the balance, it is a very serious question as to whether or not you would not be liable to McKie on any judgment which he might obtain, so it will not be safe to depend on paying McKie *on* one of the latter payments due to Dolph and Robinson. The only safe thing for the Company to do is to reserve enough out of the first payment that is due to Dolph and Robinson to pay McKie judgement, if he gets any. I write you this so that you may protect the company in this matter of payments.

I expected to have had a letter from you today, but as yet have not had a word. We will have to enter our appearance this week and be ready to answer, so I hope you will hurry up the copies of

those contracts, as I must have them to answer and also send me the draft for some money.

I hope you are getting along well and are in condition to help me out.

Very Truly,

Dict. K.

"EXHIBIT K." W. H. W.

Eagle Mining and Improvement Co.,
314 Tacoma Building.

BOSTON, *February 12th, 1903.*

Hon. H. B. Hamilton, El Paso, Texas.

DEAR JUDGE: I have been in the east several days, and will not be home for nearly a week. Mr. Monk has just wired me that you have written for a copy of the Helen Rae contract. I have this moment sent you a telegram, that I have instructed Ulrick to have a copy made and sent to you immediately. I have wired these instructions to Ulrick, and also to Mr. Rice, and presume you 192 will have the contract in a day or two. My copy of this contract is locked up in my private safe in Chicago, and no one there has access to it, but as Ulrick has the original, he can easily have copy made and sent to you.

I suppose you know the business which brought me east. At least you can guess; and I hope to be able to write you a more interesting letter upon my return.

I believe I have nothing further to add at this time, but will take it for granted that you will get your copy of contract from Ulrick and Rice.

With kind regards, I am
Very sincerely yours,

STURGEON.

"EXHIBIT K." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, *February 17th, 1903.*

R. C. Sturgeon, Room 314 Tacoma Building, Boston, Mass.

DEAR STURGEON: Your letter and telegram from Boston received. I hope you will have succeeded in accomplishing all you desire in Boston.

I have not yet received the contract from Ulrick but suppose I will.

Dolph and Robinson have retained Hewitt, from White Oaks, to defend them, and they and Ulrick, I think have rather persuaded Rice that it is better or just as well to have the same counsel represent the American Gold Mining Company garnishees. However, before anything had been done in that direction I had 193 entered the appearance of the company in the suit at White

Oaks, and have entered into a stipulation with the counsel for McKie giving me until April to file answer for the garnishee. I have the interrogatories and will prepare the answer in proper time, unless it is desired by Mr. Rice to have Hewitt prepare the answer. It is immaterial of course, to me, but I rather think it will be better for the company not to mix up in the fight of Dolph and Robinson, because I can see very well where the interests of Dolph and Robinson and the American Gold Mining Company might not always harmonize, for the reason that Dolph and Robinson will probably insist on the company paying to them all of the first payment due, and reserve enough out of the subsequent payment for McKie.

This, as I have already written to you is an unsafe course for the company to pursue. It will not be safe for the company to pay to Dolph and Robinson any money until this McKie matter is settled, at least they must with-hold enough of the first payment to pay McKie, otherwise if they should pay the whole of the first payment to Dolph and Robinson they would become liable, I think, to McKie. However, I will talk this matter over with Rice when I see him. This is my view of it. I wish to do everything I can to protect the company.

Have just received letters from parties in Pennsylvania, making inquiries as to the companies, both the American and Eagle. Asking a number of questions as to the property,—development,—titles,—whether paid for and whether owned, etc. The party writing represents that he is the representative of a syndicate who will invest in large block of the stock, if they get satisfactory response.

I will try and write them satisfactorily.

194 I have also received a number of other letters among which is a letter from some of the Illinois people, down about Canton. From the cashier of the bank among others. These people seem to be getting a little nervous. I will try and write them also and quiet them down. I hope you have raised sufficient money to get things in good shape again. And do not please forget my draft. I hope you will not overlook this and will send me a draft as soon as possible, as I am greatly in need of it.

Yours truly,

“EXHIBIT K.” W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, *February 20th, 1903.*

R. C. Sturgeon, Room 314 Tacoma Building, Chicago, Ill.

DEAR STURGEON: I received a copy of your contract with Dolph and Robinson in reference to the Helen Rae mine. I do not notice any assignment of this contract from you to the American Gold Company. I presume of course you have made one or put deeds in escrow, or both, in order to show that the company have some interest in this property. If you have made an assignment of this contract, I would like a copy of that also or a statement of the fact that

such assignment has been made, the terms, conditions and date of it as I will need this to set up in the answer of the company, as it appears from the contract the American Gold Company has no interest in this property but as a matter of fact they are the 195 owners of this contract, as I understand it, and are now in possession of and operating the mine under it. Please advise me as to this and send me copy of assignment that has been made or statement of it.

Mr. Studebaker has been here. I mean the old gentleman. He stopped here on his way from the City of Mexico to California. I had a talk with him while here and he seems very much interested in the property for you and others of the company had talked the matter over with him, as I understand,—and but for his anxiety to get out to the Pacific Coast and temporary bad weather which happened to prevail at the time he was here I could have gotten him to go to the mine, but he has promised me that he will stop here on his way back from California and would go with me to the mine and investigate it, which will be sometime in April. He stated to me that if the property would bear out the representations made of it and terms could be made with reference to the stock,—he would go into it extensively, and he would investigate the matter in all of its phases and details, on his return. You of course know him better than I do, but I judge him to be a very close, careful and systematic business man, as the success of his own business would indicate. He will, therefore, investigate pretty thoroughly, as he goes through, and if I can get up to the mine I think he will be impressed with its prospects.

The company ought if possible to take up the balance of these Hopeful deeds. You can realize as well as myself the importance of having the title to this property cleared up and in the company, so that we may not have to say as we have had to do that the company only have a title to one-sixth of the mine. I think it will be important to do this and have this title straightened up as it would

make a much better impression to a man like Studebaker.

196 It will be unsatisfactory to his or any other purchaser of a large interest of the stock to know that this property is not paid for and in the investigation of the matter and a critical inquiry as to the titles which all of these men make, they are sure to become advised of this, whether they get it from me or elsewhere. I think it right, therefore, that I should urge upon the company to take these matters up at once, not only from a personal interest which I have in it, myself, which is of the greatest importance to me, but of the interest it is to the company. Not only in interesting Mr. Studebaker, but others.

Please let me hear from you as soon as possible.

Very truly yours,

— — —

Dict. K.

"EXHIBIT K." W. H. W.

Eagle Mining and Improvement Co.,
314 Tacoma Building.

CHICAGO, ILL., Feb. 21st, 1903.

Hon. H. B. Hamilton, El Paso, Texas.

MY DEAR JUDGE: I have just returned today from the east, where I have been endeavoring to get something moving. I believe I have accomplished considerable, although it may take some little time for it all to work out.

With reference to the Helen Rae suit, I find a letter here from Rice in which he says that he has made some arrangement with Hewitt & Hudspeth, who are Robertson's attorneys, but I wish you would take the matter up with Mr. Rice by correspondence, or otherwise, so that there will be no mistake made. I quite agree with you as to the necessity of care in making the future payments to Robertson & Dolph until this matter has been cleared up, and I will follow your suggestions in the matter.

197 I note what you say in reference to having received inquiries from Pennsylvania parties as to our companies. I will be glad to learn who these people are and also, if agreeable to you, should like a copy of the letter you sent them as a guide in case I might have correspondence with them. You observe the necessity of our agreeing on detail.

We will be able to make a showing on both these properties very soon, and then everybody will be satisfied, except those who have not bought any stock.

I find I am not in shape to-day to send you a draft, but will do so not later than the first of March, and before that if I possibly can. You may depend upon me doing all I can in this matter, Rice is having a pretty hard row to hoe up in his end of the country and we are all trying to do the best we can with the small amount of money that is coming in at present.

Don't forget to send me names of inquirers.

With kindest personal regards, I am

Sincerely yours,

STURGEON.

"EXHIBIT K." W. H. W.

American Gold Mining Company.
314 Tacoma Building.

CHICAGO, 2-26-03.

Hon. H. B. Hamilton, El Paso, Texas.

DEAR JUDGE: Replying to your favor of the 20th, would state that I have neglected to make an assignment of my contract with Robertson and Dolph with reference to the Helen Rae property, but have been intending to do so right along. The facts with reference to this matter, as you know, are, that the

deeds to the property are in escrow with Ulrick along with the contract, said deeds to be delivered to me upon fulfillment of the contract. You are doubtless aware of the fact that it is to our interest as well as our intention to protect Robertson & Dolph in this matter so far as possible. I have been intending to write to you in reference to this for some time but have been away so much that things pile up enormously.

My inclination would be to make a lease to the American Company, giving them the right to operate until they purchase. The facts are that of the \$57,000.00 that I have paid Robertson & Dolph, the company have only reimbursed me to the extent of about \$20,000.00. The remainder of the money, part of which I borrowed, I put up myself, as I will apparently have to do with the next payment. I would therefore be glad to receive an expression of opinion from you as to the practicability of executing a lease to the American Company dated immediately subsequent to the execution of the contract. The consideration for the lease might be the agreement on the part of the company to do say \$20,000.00 worth of development work on the property so leased, within 18 months from the date of the lease, the company to retain all values recovered in such development work. I would like to have you give this matter a little thought, and if you consider that this can be done properly, I would be glad to have you draw up such an instrument in duplicate, dated about a week after my contract with Robertson, send it to *to* me and I will execute it, and will then forward you a copy of same which you might already have in your pleadings, having drawn the original. You understand, of course, that the deal I made with Robertson and Dolph was made entirely at the solicitation and through the agency of George Ulrick. I never heard of McKie at all. Of course I knew of the value of the property through Gaylord and Rice, and which Gaylord had spoken to McKie about it on one or two occasions, he never did so on authority of this company to enter into negotiations for the purchase of it.

199 Kindly let me hear from you in reference to this by return mail if possible.

I note what you say in reference to Mr. Studebaker calling upon you, and I am very glad that he did not go up there at the present time. Things will look much better up there by the first of April anyway. I believe that we will interest Mr. Studebaker to a considerable extent on the Eagle property upon his return. I will take care that everything is in good shape at this time and when he starts his investigation.

I hope to be able in a very short time now to take care of the Johns matter, as well as your own interest. I have made some arrangements while in the east, that I believe will make it possible for us to take care of everything at an early date. Money has been coming in awfully slow for the past sixty days, but I expect to get some about next Tuesday, out of which I am going to strain a point and send you some. You have been so very considerate in all your dealings with us, that your ultimate reward shall be great;

but of course that does not pay office rent, house rent, or any other kind of rent at the present time, but as I told you before you can depend upon my looking out for your interest at the very earliest possible moment. Let me hear from you by return mail if possible.

Yours very truly,

STURGEON.

200 P. S.—May be I ought to execute an agreement to sell the Rae to the American Company for \$150,000.00. What do you think ?

SS.

"EXHIBIT K." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, *March 5th, 1903.*

Mr. R. C. Sturgeon, Room 314 Tacoma Building, Chicago, Ill.

DEAR STURGEON: Owing to the blockade from snow on the Rock Island which has prevailed here for several days, your letter of the 26th has just reached me. I think you are quite right in stating that you should make a contract with the American Gold Company or an assignment of your contract to them in some form. I will, to-day or tomorrow, draft one covering as near as I can in substance what you say and send it to you for your signature. I think it will be well to have this before the answer of the company is filed to the garnishment proceedings.

I hope you have sent me a draft this week as you state in your letter. I am badly in need of money and must have some help if you can give it to me. I will write you more fully in a day or two.

Yours truly,

Dict. K.

201

"EXHIBIT K." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, *March 7th, 1903.*

R. C. Sturgeon, Room 314, Tacoma Building, Chicago, Ills.

DEAR STURGEON: I enclose you herewith a draft of an assignment which I think you can make to the company for the Helen Rae property. To this assignment is to be attached, of course, as you will see by the assignment itself, a copy of the contract. A copy of the assignment is supposed to be attached to and made a part of this assignment. I have simply made an assignment of the contract from you to the company giving and granting to the Company all the rights, privileges and benefits which you hold under the contract and also obliging the company to assign and carry out all the covenants and agreements under the terms and provisions of the contract. In addition to this I have put in, as suggested in

your letter, an obligation on the part of the company to expend during the eighteen months twenty thousand dollars in the development of the property and upon a failure on the part of the company to expend this either in development or improvements, or upon its failure to carry out any of the terms and conditions of the contract which you hold, then they forfeit the contract and their right to the property. I also bind you to execute and place in the bank deeds to the property. All of these deeds, both the deeds of Dolph and Robinson to you and the deeds from yourself must be 202 executed with your wives jointly. I do not know whether the deeds now in bank are so executed or not. If not, they should be. It is necessary, I think, to make this assignment, if not in the form in which I have drawn it, then you can re-draw it in such form as you see proper only it is necessary that the company becomes possessed of all your right under this contract, because as it now stands the company have nothing whatsoever to show that they have any interest in the property, and as I suggested to Rice the other day in a letter which I wrote to him, it is very dangerous to leave it in this attitude. Dangerous both to the company and to its officers and board. In the event some dis-satisfied stockholder should discover it, he might attempt to make serious trouble over it. It is therefore necessary that this be done. If you executed this assignment, or any other assignment in form, please send me a copy of it at once. I have retained a copy of this which I enclose you herein.

Had I the time or money, or rather the latter, I would come to Chicago and go over this and a number of other matters connected with these companies with you. There are some matters connected with the Company which I would like to discuss with you, if I had the opportunity, but I presume it is not important enough to take me there now.

I hope to receive draft from you in a few days.

Yours truly,

Diet. K.

203

"EXHIBIT K." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, *March 24th, 1903.*

R. C. Sturgeon, Room 314 Tacoma Building, Chicago, Ill.

DEAR STURGEON: I enclose you herewith abstracts of title which I brought home to get the data upon which to prepare the deed. I will prepare and send deeds to Hewitt by tomorrow or next day so that they will reach him in ample time to be executed after the articles of incorporation have been duly filed. I spoke to Rice in reference to the publication and he will attend to them and you will of course hold your preliminary meeting in Chicago for the election of officers with the purchase of the property from the Old Abe Company, and authorizing execution of mortgage and bonds, etc. I will

also send you resolution to be adopted by your Board designating Rice as agent in his Territory upon whom service or process may be had as required by the laws of this Territory.

I hope you arrived home safely and that Mr. Steele is satisfied with his investigation. I hope Rice will adjust things at the Old Abe so that the mill may run on profitable ore. This, I think is important at least for the coming month. I will write you again in a day or two. I hope you find things in good shape in Chicago.

Yours truly,

"EXHIBIT K."

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, *March 25th, 1903.*

R. C. Sturgeon, No. 314 Tacoma Building, Chicago, Ill.

DEAR STURGEON: Since writing you on yesterday, it has occurred to me that it would be well for me to obtain from the Clerk at Lincoln, a certificate that there are no judgments or other liens of record, effecting in any way the Old Abe Mines, to which we have the abstract.

Since thinking over the matter the certificate, as I remember it, is not broad enough, and thinking the Attorney who will examine it, might be technical, it would be well to have this certificate and attach it to the abstract. I will try to procure it and send it to you.

I hope all is doing well and that money is coming in and that I may get that wire through the bank.

Yours Truly,

"EXHIBIT K." W. H. W.

Western Union Telegram.

Received at 109 South Oregon St., El Paso, Texas. 180 Da. Id. R. 14 Paid.

SPRINGFIELD, MASS., *Mar. 30, 1903.*

E. B. Hamilton, Mundy Building, El Paso, Texas.

Mail immediately Hampden Trust Co. form of mortgage complied with New Mexico Laws deal closed.

2:21 P. M.

R. C. STURGEON.

EL PASO, TEXAS, *March 30th, 1903.*

R. C. Sturgeon, Room 314 Tacoma Building, Chicago, Illinois.

DEAR STURGEON: I have prepared the deeds of the mines, sent them to Hewitt on Saturday and I presume they will be executed and forwarded today. You will remember while in White Oaks we had some conversation as to the advisability of having the stock-

holders of the Eagle Company approve of the action of the company in the sale of the lease or option which they held on the Old Abe. As I stated to you then, the Company having acquired an option of the Old Abe Mine and having expended therein a large amount of money which was obtained by the stockholders, the stockholders of this company would necessarily have an interest in the Company, and while it might be that the Board could surrender that option in the interest of the Company and the stockholders, yet it would seem to me that in order to avoid any possible difficulty or dissatisfaction on the part of stockholders that the stockholders should ratify this action of the board in selling the lease or option which they had on the Old Abe. You thought while in White Oaks that there would be no difficulty in obtaining the consent of the stockholders and a ratification of the sale. I think if you can secure this, it should be done. It is quite likely also that the attorneys who examine into the matter in the East might require this to be done so as to avoid any attack on the transaction by the stockholders of the Eagle Company. I have no doubt that the Eagle stockholders would approve it and in fact it seems to be their only sal-

206 vation and their only way out of the difficulty. Certain plans which you have adopted and are trying to carry through seems to be the only way which would save them from the entire loss of the Old Abe and the money which they have put into it, and under this state of facts they would certainly approve it. I presume the deeds and mortgage will be executed at once. In the execution of the mortgage by the Old Abe Mining & Milling Company to the Hampden Trust Company they want to be careful as to drawing the mortgage and as to form of the acknowledgement of it under the Statutes of New Mexico. I deemed it advisable to write to you in reference to these matters so that you might not overlook them. I hope to hear from you before you go east. I hope you found things in good shape when you got to Chicago and that you have been able to raise and get money which you expected. Let me hear from you and how you are getting along. Should it be necessary for me to come East as you spoke of while in White Oaks, give me as much notice as you can. I can, however, come on short notice if necessary.

Hoping favorable news from you I remain,
Yours Truly,

"EXHIBIT K." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, April 4th, 1903.

Mr. R. C. Sturgeon, Chicago, Ill.

DEAR STURGEON: When I received your telegram I wired you that there are no blanks that are suitable for this class of mortgage. I always draw these without any form. The best that I 207 could do for you under the circumstances was to send you copies of two deeds of trust which have been used for se-

curities in New Mexico. One to secure bonds on real estate and cattle and the other to secure bonds on mining property. These contain conditions and provisions which may be of some value to you. The printed one is drawn by me several years ago and went the rounds of the Supreme Court and stood the test. It is all right now under the law, with the exception of the acknowledgement. I have attached to it a form of acknowledgement required by the statute of corporations. From these two mortgages you may be able to get such information as will help you in drawing the deed of trust. I sent and obtained these copies to send you as the best I could do at present. I had thought of trying to draw one for you, but I felt that that would be useless to attempt, not having the bonds or coupons or knowing the terms or conditions. You did not tell me in your telegram where to address you and I therefore send one copy of this letter to Chicago and enclose a copy of it with the mortgages to the Hampden Trust Company. I am sorry of the delay in the matter, but it could not be avoided. Let me know how you get along. I should have been glad to have drawn this mortgage myself had I been in possession of the information to do so.

Yours truly,

"EXHIBIT K." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, April 8, 1903.

R. C. Sturgeon, Room 314 Tacoma Building, Chicago, Ill.

208 DEAR STURGEON: I enclose herein the resolution designating Rice as the local agent of the Old Abe Gold Mining & Milling Company which you will please have adopted and sent either to me or the Secretary of the Territory at Santa Fe. If you send it direct send also One Dollar to pay for the filing. This should be adopted and sent at once. I have not heard from you since receiving your telegram at Springfield. I presume the Bank received the copies of the mortgage which I sent them for the preparation of the mortgage to secure the bonds. I wish to impress upon you again the importance of having the stockholders of the Eagle Company ratify the action of the Eagle Company in surrendering its option upon the Old Abe and allowing it to be purchased by the Old Abe Mining and Milling Company, and the more I think of this matter and investigate it, the more I become impressed with the safety and importance of having this done. While it is true the Eagle Company had no binding written contract with the Old Abe Company for the purchase of the Old Abe Mine, as it now turns out, that Mr. Rice had nothing really but a verbal option which, as a business proposition, was very dangerous to the Eagle Company. While it is true that the Eagle Company really had no deed or contract to the mine yet, upon the faith of this verbal contract or option, the Eagle Company extensively advertised its purchase of the Old

Abe, giving the inference to the purchasers of stock that it was the owner of it, and with that advertisement it has succeeded in selling a vast amount of stock and acquiring a large amount of money, which the Eagle Company have invested in the Old Abe and in other ways. This, of course, gives the Eagle stockholders a claim upon the Old Abe option, whatever it is worth, and to surrender that option and

transfer it, I think the consent of at least a majority of the 209 stockholders should be obtained to avoid any danger or difficulty.

While the Eagle stockholder might have no claim upon the Old Abe Mine in the hands of the new company, yet he might, should see fit to do so, attempt to make some serious trouble for the Eagle Company and its Board of Directors. We do not want any dissatisfied stockholders of the Eagle Company to combine and give the Eagle Company and its officers trouble over this transaction. I am afraid there is serious danger that they might do so unless we get the ratification of this transaction. The Eagle stockholders are of course not advised of the nature of the option and the real estate transaction affecting the Old Abe Mine, and before they become advised of *of* that I think it would be important to have this transaction ratified. I call your attention to this because I want to steer you and the company and its board around any possible difficulty which might come up in the future. You, of course, can appreciate it and appreciate my position and the importance of doing so. I hope you have succeeded in closing the deal and getting the money on the bonds as this will put the whole enterprise on its feet again. If you find you are coming you can write or wire me.

Yours truly,

"EXHIBIT K." W. H. W.

Eagle Mining and Improvement Co..
314 Tacoma Building.

CHICAGO, ILL., April 19th, 1903.

Hon. H. B. Hamilton, El Paso, Texas.

DEAR JUDGE: Everything is working out all right on the Old Abe deal and the papers were all duly received and executed. I thank you very much for the copies of the bond which you so kindly 210 sent. They were used by the Trust Company and the Bonds are now being engraved. I also received from you the resolution appointing Rice as Resident Agent of the Company and same has been attended to.

I am going out to the American Mine Tuesday night, arriving at Carrizozo some time Thursday. I will be there for several days and if there is anything that you might want to go over with me, you might come up. I don't know of anything urgent, however, as I am quite sure everything is in good shape. We will begin to get some money quite soon and I will take care of you out of the first of it as I agreed to. As I am very busy I will not write a long letter today, but will go more fully into the details upon my return.

With kind regards, I am,

Yours truly,

STURGEON.

"EXHIBIT K."

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, April 20th, 1903.

No. 314 Tacoma Building, Chicago, Ill.

DEAR STURGEON: I wired you this morning as follows: Called to White Oaks, Lincoln. Important business. Company. How are finances." I received word from Rice that the sheriff has been urged to press for collection an unsatisfied judgment against Valuable Gold Mining Company which covers the property now held by the American Gold Mining Company. A portion of this judgment has been paid and the matter seems to be in some complication between the judgment creditor H. Hinley, who had charge of it, and Whorton his attorney, and it seems that the money had not been applied on the judgment, and the sheriff is instructed to advertise the property for sale. I want to look into the condition of the matter of the judgment and prevent a sale of the property if possible, and also prevent them from collecting any more than is justly due until we get in shape and pay what is due. I shall go tomorrow night to White Oaks in Lincoln and take the matter up with the sheriff and try to get it adjusted. I did not like to wire you. The fact is I need the money to make the trip. I shall go anyway, whether I get any response from you or not. I hope you are getting along successfully and that we may get out of this hard place soon.

Yours Truly,

"EXHIBIT K." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, April 28th, 1903.

R. C. Sturgeon, Room 314 Tacoma Building, Chicago, Ill.

DEAR STURGEON: On my return home I find a notice from Mrs. Brooks of which the enclosed is a copy: Mr. Tilden, I presume has also received notice direct. Of course this means that they offer the stock for sale to take care of the notes that were due. I presumed you were advised of it in Chicago, but I sent you this as a matter of precaution.

Hoping you arrived home safely and found everything in good shape, I remain,

Yours truly,

212 Eagle Mining and Improvement Co.,
314 Tacoma Building.

CHICAGO, ILL., May 4th, 1903.

Hon. H. B. Hamilton, Mundy Building, El Paso, Texas.

MY DEAR JUDGE: Replying to your favor of the 28th Ult., would say that upon my return from the mines, I found a copy of the

notice you received from Mrs. Brooks and we have taken care of the matter, so that it no longer threatens to ditch us. Mr. Wilson, of Scranton, whom you met out there, went home enthusiastic. He has practically guaranteed us \$100,000 within the current month.

I hope to be able to send you the kind of letter you want sometime during the next ten days, and I assure you it will give me a great pleasure to do so.

With kind regards, I am,
Sincerely yours,

STURGEON.

"EXHIBIT K." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, May 13th, 1906.

R. C. Sturgeon, Room 314 Tacoma Building, Chicago, Illinois.

DEAR STURGEON: I wish to remind you not to forget to file your answer in the garnishment proceedings of McKie. You told me when you were here that service had been made upon you in a copy of the interrogatories and that you would prepare and send your answer to the Clerk of the District Court at Lincoln.

Excuse me for reminding you of the matter, but I felt that in your going to and fro and being constantly crowded and pressed with other business, you might overlook it.

I am glad you have gotten rid of the pesky Brooks matter.

I hope a letter and draft from you in a few days in accordance with your last letter as I will certainly appreciate it more than you can imagine. Hoping things are looking well, I remain,

Yours truly,

"EXHIBIT K." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, May 15th, 1903.

R. C. Sturgeon, Room 314 Tacoma Building, Chicago, Ill.

DEAR STURGEON: I have received a letter from Tilden, of Garrettsville, in which he asks me to write to Prof. Wilson, 620 Cornel Building, Scranton, Penn., and answer certain questions propounded by Wilson. He then goes on and states to me the questions which Mr. Wilson desires answered in reference to the title of the property of the Eagle Company, whether it has titles to the mines, whether they are paid for and whether the titles are of record. And he also asks some questions in reference to the Deputy United States Surveyors and something in reference to the Charter and By-laws of the company. Mr. Tilden's letter is not very explicit, and I cannot tell exactly what Prof. Wilson desires, except in part.

214 I have therefore written Prof. Wilson, telling him of Mr. Tilden's letter and asking him to state to me exactly the

character of the information he desires and I will endeavor to give it. I cannot tell him much about the By-laws of the company, but he can get that from your office. I think I prepared at one time a set of By-laws and gave them to some officer of the company, perhaps Mr. George.

I presume I will hear from Mr. Wilson in the course of a week or ten days, when I will reply to him and I can probably satisfy him as to the titles of the property in everything except the Hopeful. I do not care to go into details as to this unless he requires it. I have a list of the property and mines from the records of the Probate Clerk to which the company have title and I will send him that. I had no talk with him while here, however, I think he learned from some source that the titles to the Hopeful were unsettled. I can easily explain the delay in the payment of the Johns interest on account of its going through the courts. You know of course the condition of the title. The third interest held by the Johns estate calling for \$13,000.00, the Parker suit covered by the attachment on the mine brought some three years ago for \$1500.00 and the half interest held by myself for \$10,000.00, making the balance due on the property to clear up the title \$24,500.00. Of course we do not care to explain all this in detail to Mr. Wilson unless it becomes necessary. If he requires it, however, and we make any statement at all we must state the facts as he will find them out elsewhere. I will be glad if the matter can be arranged in some way so as to clear up the title as soon as possible as you must see the importance of it. I will probably hear from Prof. Wilson in a week or ten days when I will write him. In the mean time I hope to hear from you and get some suggestions from you. I have written to Rice and 215 Tilden so that you may all understand the situation. I am much afraid that a knowledge of all the facts connected with the Hopeful will discourage him altogether, although it may not and I will make the best showing I can consistent with the facts. I hope to hear from you.

Yours truly,

"EXHIBIT K." W. H. W.

Western Union Telegram.

10. My. Ca. on. 7 paid.

MIDLAND, TEXAS, June 1, '03.

H. B. Hamilton, El Paso, Texas:

Meet me Sheldon House tonight six thirty.

STURGEON.

854 a.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, June 19th, 1903.

DEAR STURGEON: A letter just received from Hewitt tells me that you have not been able to meet the payment on the Old Abe, and that

they will get their deeds back this week. I am very sorry that this is the case, as I had hoped that you would be able to carry the matter through.

Assuming that the information is correct, and that you will not be able to raise the money to take the mine, I presume this means of course that it will revert back to the original owners. I would like to know what the policy of the company will be in the event this is the case. Will you attempt to go on and raise the money to carry on the Eagle Company, and put a plant on the Hopeful, or what will be your policy? I wish you would let me know what you think you can do, and what you intend to do.

Yours truly,

H. B. H.

"EXHIBIT K." W. H. W.

Eagle Mining and Improvement Co.,
314 Tacoma Building.

CHICAGO, ILL., June 23d, 1903.

Hon. H. B. Hamilton, El Paso, Texas.

MY DEAR JUDGE: I am in receipt of your favor of the 19th, and hasten to reply. Under the escrow arrangement with the Hampden Trust Company, Hewitt's deed was to be sent back to him on June 1st, if the money was not deposited, to take care of it, hence I am surprised he did not have his deed two weeks ago. However, from information that I have from Mr. Marsh, I am quite sure that we will yet be able to carry the transaction through, although I am not sure of it by any means. I have a letter this morning from Mr. Rice, stating that Ferguson has been kicking up the fuss with Hewitt, and insisting upon Hewitt's taking action to get the property back. Mr. Rice assured Mr. Hewitt, however, that in case our plans did not mature, that we would immediately surrender possession of the premises, without any recourse to legal action, which is, of course, our position in the matter.

With reference to the Hopeful property, you can rest assured that we are going right ahead with that, no difference what happens to the Old Abe deal. I suppose it is true that we made a mistake in taking over the Old Abe property at the time we did, but it seemed to be good judgment at that time, and we merely overshot 217 the mark a little. Mr. George assured Mr. Rice in the presence of the other directors, that he would personally raise the money to take care of the payments upon the Old Abe as they matured, and Mr. Rice *demanded* upon that being done. Mr. George, of course, fell down on his promise, and was unable to make good. This has put us into a hole, where we stand to lose about \$70,000.00. I cannot see how any blame can attach to Mr. Rice in the matter, as he was not in touch with the financial conditions here, except as he was told. From your letter, I imagine that you have the idea that we may lie down on the whole deal. I assure you that nothing is further from my intentions and as long as I am able to get down here to the office to attend to business, I will continue exactly as I have in the past, and you need have no

doubt as to our ultimate success. It is true that we may be a little longer in getting this going than we expected to be, but we must all stick together, if we want to reap the reward which I believe we have earned already. I believe that I will yet be able to carry through the Old Abe deal, and will know within a very few days.

With reference to the interest which you have in the Hopeful, would say, that I believe your interests would be best conserved by standing with Rice and myself because our success means considerable money for you; whereas the interest which you have in the Hopeful would not be productive of any immediate returns. I don't think.

Now Judge, be patient a little longer; consider what we have gone through in our efforts to build up a big enterprise, and do not get the idea into your head that our zeal is abating in the slightest degree. Let me hear from you.

Yours truly,

STURGEON.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, June 26th, 1903.

Mr. R. C. Sturgeon, Room 314, Tacoma Building, Chicago, Ill.

DEAR STURGEON: I have just received from Mr. Rice papers from the sheriff of Lincoln County in which suit has been brought in two cases, one against the American Gold Mining Company by Hendry & Bolthoff of Denver, for something over Seven Thousand (\$7000.00) Dollars, and *and* one by the same firm against the Eagle Company. These suits have just been filed, the writs issued, served and sent to me by Mr. Rice. I will have to go to Lincoln and White Oaks to look into these matters in order to prepare the answers.

I would like to know how things are getting along with the companies. I wish to impress upon you and the companies the fact that I must have money in order to enable me to proceed in these matters. The companies ought not certainly to expect me to go on with their business, spending time and money, unless I am compensated for it. I wish you would attend to the matter at once and send me a draft or my fees or at least a portion of it. The company now, or on the first of July, will owe me ten thousand dollars (\$10,000.00), outside of the money due me on the Hopeful, and I certainly ought to have a portion of my money, if not all of it, and while I am perfectly willing to stay with you as long as I can, I cannot afford to follow these matters up and neglect my own business, without getting some money for it.

I hope you or the company will take no offense at this 219 matter, as it is simply and purely a matter of business

Please let me hear from you by letter or wire immediately, on receipt of this, as something ought to be done at once.

Yours truly,

H. B. H.

"EXHIBIT K." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO TEXAS, June 26th, 1903.

Mr. R. C. Sturgeon, Room 314, Tacoma Building, Chicago, Ill.

DEAR STURGEON: Rice has sent me today papers showing that the two suits have been filed in Lincoln County, one against the American for over Seven Thousand (\$7,000.00) Dollars, and one against the Eagle Company for a smaller amount, both brought by Hendry and Bolthoff, of Denver.

I will have to go up there and look after these causes, ascertain certain facts, prepare the answers and prevent a default.

I wish you would send me a draft for some money, as I must have some to carry on these fights at this end of the line. I must also have some money for my expenses, so I hope you will send me a draft next week, as I understand you will obtain some money next week from the sale of stock.

Yours truly,

H. B. H.

220 H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, June 27th, 1903.

Mr. R. C. Sturgeon, Room 314 Tacoma Building, Chicago.

DEAR STURGEON: Yours of the 23rd received. I am glad to learn that you are still determined to carry on the enterprise and put it through. The failure of the Old Abe, if it should fail, of course is unfortunate, but is one of those failures connected with mining enterprises that are not at all unusual, and the Company has more than property enough left to make their enterprise a success if it can realize the funds to carry it through. Outside of your own Board of Directors, yourself, Rice and Tilden, there is no one perhaps who has felt a deeper interest in the success of the enterprise than myself. I have done, and am doing, all I can to aid you. I have thought of giving up my connection with the Company on the first of July, but I have no desire to do this if the matter can be carried through. I do not know, but from some facts that I had heard lead me to believe that possibly you would not be able to carry the matter through and were disposed to give it up. I am glad to learn, however, that this is not the case. I am willing to stay with you as long as I can, but of course am very anxious to get my own matters with the Company arranged and settled. I know your condition and that of the Company, and the difficulties you have had, and therefore I have not said very much about these matters and am not disposed to press them, but would like to have some help in the matter as soon as it is possible to get it. I understand from Mr. Tilden that the Wilson people

221 of Scranton have about Thirty Thousand Dollars which they can pay over and probably will pay over by next week, and Tilden tells me he is assured by them that they can dispose

of at least five hundred thousand (500,000) shares of the stock. If this can be done, of course, it will put you on your feet and you can straighten these matters up. Really I think your main point of success lies in getting a start on the Hopeful. As you perhaps know, I have not and never have had very much confidence in the success of the Old Abe, even though you might succeed in raising the money to pay for it, and I have always thought that the Hopeful, and the property in that locality, would be the means of pulling you out, so I feel that the Company should straighten up the title to this property and get a mill there as soon as possible, which of course I know you will do.

I wrote you yesterday with reference to some suits which have been brought against the Company, and there are several more in prospect, which, if not already filed, will be filed soon, and we are likely to have quite a string of litigation, both as against the American and the Eagle, and we will have to prepare to prevent these judgments as much as possible.

Are you coming down to New Mexico soon—if so, I wish you would let me know by letter or wire, and I will try and meet you at the mines.

Yours truly,
H. B. H.

EXHIBIT "L" J. M. Rice Correspondence.

Eagle Mining and Improvement Co.

WHITE OAKS, NEW MEX., June 24th, 1903.

222 MY DEAR HAMILTON: When I wired you Monday, supposed you were in El Paso. The reason was that the attorney for this Denver concern sent word for me to meet him Monday in Lincoln, and as I was not going to Lincoln, wired him to meet me at the American Mines. He did not take any pains to meet me and no one knows that he called at the office of the mines. The result of this visit is the enclosed notices of suit which I send to you. The bill of goods to the American was ordered by Gaylord through Scott and against my wishes. However, I suppose you will have to put in an answer to each suit which please attend to at your leisure. I suppose that the American stockholders meeting of tomorrow will provide ways and means. I have every assurance that matters will be closed here soon. Thinking perhaps that by sending these papers to you it may avoid the necessity of a trip up here at present. When are you going to bring Mrs. Hamilton to Parsons?

Yours truly,

J. M. RICE.

Postal Telegram.

10
H. B. Hamilton, Santa Fe.

Notify me your return El Paso will advise when to come.

WHITE OAKS, N. M., June 23.

J. M. RICE.

"EXHIBIT L." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, June 20th, 1903.

223 Mr. J. M. Rice, Parsons, New Mexico.

DEAR RICE: I have just been advised by Mr. Hewitt that the Company has failed to make the payment on the Old Abe, and that he would get his deeds back this week. This of course I presume means that the Old Abe will revert back to the owners, and the matter will be drop so far as the Eagle Company is concerned.

What will be the policy of the Company now; do they intend to go on and try to raise funds to put a plant on the Hopeful, and what are the prospects?

Would be glad to hear from you.

Yours truly,

H. B. H.

Postal Telegram.

13 Coll. 5 ex 56 cents.

Walnut N. M.,

Forwarded from El Paso,

JUNE 22.

H. B. Hamilton, Care Palace Hotel, Santa Fe.

Meet me White Oaks tomorrow Tuesday morning important.

J. M. RICE.

"EXHIBIT L." W. H. W.

Eagle Mining and Improvement Co.

PARSONS, N. M., June 8th, 1903.

MY DEAR HAMILTON: Yours at hand, contents noted. The party from Mass., left well pleased and I think will do business if they don't get side-tracked before they get to Mass. Will send 224 you some money as soon as it is possible as the prospect is favorable for some very soon. What will have to be done about the Morley suit? He is just trying to hold us up.

With kind regards, yours truly,

J. M. RICE.

Rain every day the past week.

"EXHIBIT L." W. H. W.

Eagle Mining and Improvement Co.

PARSONS, N. M., May 20th, 1903.

MY DEAR HAMILTON: Yours of the 18th at hand. I note what you say of the title to Hopeful, etc., but it will not be necessary to

go into the details with Wilson or any one else. We will have a good title when it is all paid for and as there are some points to be settled in an estate or Probate Court. We want money and must have it to enable us to get all these titles, but it is not necessary to say to anyone that we have only clear title to one-sixth of the Hopeful. I have just received bill from Ellis for copy of list of claims so suppose you have it now. Mr. Gaylord returned today and there will be a lot of others Friday.

Yours truly,

J. M. RICE.

Sturgeon went to Springfield, Mass., last Saturday.

"EXHIBIT L." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, May 18, 1903.

225 J. M. Rice, Parsons, N. M.

MY DEAR RICE: Yours received. I think possibly it would be just as well to say nothing about the Hopeful Mine at all unless he asks especially about it as we do not desire to give him any facts about it unless we state to him the exact facts. The Hopeful title stands in this shape. The Company have a deed from E. S. Parsons and wife to one-sixth of the mine. The Johns estate have title to one-third of the mine, which is to be cleared up and which the Company will get from the payment of the \$13,000.00 due to the John's estate. I hold title to the other half of the mine to be given to the Company upon the payment of the amount due me upon the property of \$10,000.00. The suit of Parker against the mine for which the mine has been attached for \$1,500.00 of course will be cleared up and dismissed when this \$1500.00 is satisfied. Until those amounts are paid and satisfied of course the company will have no clear title to the Hopeful except the one-sixth from E. S. Parsons. It is true the Company have the tax deeds which have been made to them which does not, as I consider, vest the Company with any valid title as against the owners. This is the condition of the Hopeful Title. I do not wish, of course, to state these facts to Mr. Wilson unless he absolutely demands a statement of the condition of the title to that property. Should he do so, of course we will have to state to him the truth about it because he can send to the records in Lincoln County and get the exact facts. I think, however, he may be satisfied with the list of all the property to which the Company have title, leaving out any statement of the Hopeful except to say that the title to the Hopeful property will be straightened up and the title secured as soon as the balance on the property is paid.

226 I hope you are getting favorable words from Sturgeon. I had hoped to have word from him myself before this, but have not heard from him for a few days.

Yours truly.

"EXHIBIT L." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, April 8th, 1901.

Mr. J. M. Rice, No. 115 S. P. Avenue, Austin Station, Chicago, Illinois.

DEAR MR. RICE: I have just heard from the Iowa and Kansas City people on the Parsons' deeds. I have arranged with them, but they still insist on getting the money cash, if we can get it. Do you suppose you can arrange to get the money or have it paid right away? I have drawn and sent them the deeds to execute, and have asked them to put the deeds in the First National Bank at Kansas City. My deed, of course you will get from the bank here, and the money to be paid over here or in Kansas City, and take up their deeds there to me.

What I would like to know is, whether your people would advance the Fifteen Thousand Dollars to take up their deeds at once? I have got the title arranged and can make the deeds at any time that the money is paid. The deeds will be executed in the next few days, and I will put my deed in the First National Bank here, and the money can be paid over here, and I can deliver them the deed and transmit the money to Kansas City through the Bank here, and take up the deeds there, or if you prefer, you can pay the 227 money in Kansas City, and take up the deeds there.

I wish you would advise me by letter or wire on receipt of this, whether your people will pay the money over at once. These heirs are very cranky about get-ing the money and do not want to extend the time, but want the money paid in cash, or what is practically cash. Some of the Parsons here have written to them, endeavoring to interfere with my negotiations with them, but I have got the matter so arranged that they cannot do this, if I can get the money to pay for the property, so please let me hear from you at once.

Yours truly,

115 S. PINE AVENUE,
AUSTIN ST., CHICAGO, June 1st, 1901.

H. B. Hamilton, El Paso, Texas.

MY DEAR SIR: I have been intending to drop you a line for some time, but have not done so. Had hoped to get everything shaped to start back by to-night, but have to delay for a day or so. Mr. George is getting the matter of the company about arranged to suit him and then we shall be in shape to proceed. There is no chance to place the salt proposition than I can see, at least for the present. I received a letter today from the girls and they had not received the package of hats that you kindly offered to forward by Wells Fargo to Capitan. If not too much trouble, please step into the office

and ask them to see that they are delivered, up to the 26th they were not at Capitan.

Hoping to see you within a few days, I am

Very truly,

J. M. RICE.

Telegram.

2 So D Fn 151 p 14 pd 5 Ex W Via El Paso.

CHICAGO, 6, 17-18, 1901.

To H. B. Hamilton, care Ira Wetmore, Capitan, N. Mex.:

Expect to leave this week. Matters progressing all right.

J. M. RICE.

115 S. Pine Av.

AUSTIN STA., CHICAGO, June 24th, 1901.

H. B. Hamilton, El Paso, Texas.

MY DEAR SIR: Mr. George has not yet returned from Butte, Mont., but expect him tomorrow. I will leave here so as to arrive in El Paso next Monday morning; will remain there until Tuesday, will call on you on arrival and look over the situation and decide on future line of procedure.

With kind regards,

Yours very truly,

J. M. RICE.

"EXHIBIT L." W. H. W.

Postal Telegram.

8 Go Ao D 5 paid

ALAMOGORDO, N. Mex., July 25th.

H. B. Hamilton, Mundy Block, El Paso:

Will arrive in El Paso tonight.

J. M. RICE.

PARSONS, N. M., August 6th, 1901.

H. B. Hamilton, El Paso, Texas.

MY DEAR SIR: So far I have not heard from the Secretary of the Territory about the incorporation papers, if you have not, please write him, as am anxious to have the certified copy to send Chicago. Enclosed please find some photo films which I will ask you to send to Mr. Feldman and have him develop them and make two prints

of each that are good and send me the bill here and I remit, and oblige.

Yours truly,

J. M. RICE.

"EXHIBIT L." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, *August 9th, 1901.*

Mr. J. M. Rice, Parsons, New Mexico.

DEAR SIR: I think I told you the other day that if the Articles of Incorporation came to you, to send them to me before sending them to Chicago or elsewhere, as I wished to see that the Charter is properly dated, as I am trying to get the Secretary to file the Articles and issue the Charter as of the 29th, the day he first received the papers. I have communicated with him upon this subject and expect to hear from him in a day or two. I have communicated with 230 King and as soon as I find King has forwarded his papers to the Secretary or to me, I may go to Santa Fe to see about it. I will try and get the matter arranged at the earliest day possible.

I have received a letter from my Parson's people, in which they claim that someone has made them an offer on $\frac{3}{4}$ interest, outside of your Company. Whether this is true or not, I do not know. They say that it is some people who have some interest in that country. Do you think it is likely that anybody can be figuring on the purchase of it, with a view of turning it over to your Company at a high figure? I hope the Chicago people will get around with the money as soon as possible, so that we may take up these interests and avoid any possible conflict or danger.

I will keep you advised as to the charter as I stated. Send the papers down to me if they come to you without filing them in Lincoln County.

Yours Truly,

"EXHIBIT L." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, *August 12th, 1901.*

Mr. J. M. Rice, Parsons, New Mexico.

DEAR SIR: I have just received communications from Mr. King of Chicago in which he reports that he was appointed in 1868, and has been Commissioner ever since, and never had any notice from the government of his removal. I have also had two lengthy communications from the Secretary of the Territory in which he says he finally succeeded in finding the records in his office showing the 231 appointment of King as Commissioner; but he says there is a little error of King's qualification and he says if King will send his oath of office and allow it to be filed in the

Secretary's Office, that the charter of the Company will then issue, and it will be all right, and the acts of the company will be all legal and correct. I have communicated with King today and he will forward at once to the Secretary his oath of office. The Charter of the Company will then issue from the Secretary and be sent to us with the copies as soon as King sends his oath of office to the Secretary. This will be sometime this week. Under the law and the ruling of the Attorney General upon his matter, the Company of course is fully authorized to do business, assuming that King will file his oath of office. As soon as the Charter is issued, it will relate back to the date of the filing, and will make all proceedings of the company legal and valid. I will forward you the Charter as soon as I get it. So I think now everything will be all right in the matter and the company can go ahead. Of course, any meeting they hold now, will be held subsequent to the date of the filing. There may be a controversy between the secretary and myself as to whether he will issue the Charter as of the 29th of July, or of the 5th of August. I will try to get him to issue it as of the 29th. Either, however, will make the company perfectly valid and will legalize all of the acts. The company need not at this time change their date of original meeting. I will advise you further in the matter.

I hope as I wrote you the other day, that they will get around so that we take up the Parsons' deeds as soon as possible. I will get your pictures to you in a few days.

PARSONS, Aug. 15th, 1901.

MY DEAR HAMILTON: Yours of the 9th at hand and in reply you can only say that I think we are entitled to have the Charter dated July 29th at any cost of the official dignity of the secretary. The company have had their meetings based on the fact that the articles were sent to Santa Fe for filing and we should be protected.

As to the question of C. C. Parsons having other offers for their interest in the Hopeful, I hope it is not true as it could only lead to trouble as we propose to have the property and I fail to see who could want it, except for a blackmailing scheme. I shall probably come to El Paso either Saturday or Monday, and hope to be able to devise some means of settling the Carpenter and C. C. question by having them put their deeds in bank at Kansas City at once, and we will put a reasonable amount up also, not longer than sixty days.

With kind regards, I am

Yours truly,

J. M. RICE.

"EXHIBIT L." W. H. W.

PARSONS, Sept. 12th, 1901.

H. B. Hamilton, El Paso, Texas.

MY DEAR SIR: The publication of the Articles of Incorporation was made in last week's issue of the Capitan Progress all right, and

the certificate will follow as soon as I can go over to Capitan. May go there to-morrow. I expect to have some letter or telegram to-day with regard to meeting party at El Paso, so may see you 233 almost as soon as this letter arrives. All well at this end.

Yours very truly,

J. M. RICE.

"EXHIBIT L." W. H. W.

CAPITAN, N. M., Sept. 16, 1901.

H. B. Hamilton, El Paso, Texas.

MY DEAR SIR: I drove here this p. m. and met the publisher of the Progress and he agreed to forward to you by this mail the certified copy of the publication of the Articles of Incorporation. I find that the wires are down so that there is no chance to reach Chicago by wire and I have no advice as to when Mr. Bartley is to arrive, so shall not come down until I hear more definitely. The president's death will no doubt disturb conditions some, but I trust not seriously. With us we cannot expect any very serious consequences.

Yours very truly,

J. M. RICE.

"EXHIBIT L." W. H. W.

PARSONS, Sept. 19, 1901.

H. B. Hamilton, El Paso, Texas.

MY DEAR SIR: Yours at hand this mail and also telegram from Brooks saying to wait for telegram about Bartley's coming; everything all right; says important letter on the way. I won't come down until later as it seems best to wait here. You might forward letter here. Yours in haste.

Very truly,

J. M. RICE.

234

"EXHIBIT L." W. H. W.

PARSONS, Sept. 26th, 1901.

H. B. Hamilton, El Paso, Tex.

MY DEAR SIR: Will write you a line by this mail so that you will know how matters are progressing. News from Brooks is that everything is moving all right now after the disquietude occasioned by the death of President McKinley, and the steel strike has ended. Mr. Tilden was in Chicago last week and returned to Ohio and will push his end rapidly, and Mr. George is getting his parties in line and we may expect results very soon now. Bartley may be here soon; all in good shape here. I will come to El Paso soon as am advised that funds are ready.

Yours truly,

J. M. RICE.

"EXHIBIT L." W. H. W.

El Paso and Northeastern System.

ALAMOGORDO, N. M., Oct. 7, 1901.

Mr. J. M. Rice, Parsons, Lincoln County, N. M.

MY DEAR RICE: I received your telegram yesterday, I think I shall return to El Paso today, as I am engaged in this injunction fight between the Southern Pacific and the Bisbee Road. I wish you would wire me, or write me a day or two before you come to El Paso, so that I may meet you. I hope things are going on all right, and that we will be able to get the matter through soon. I received a letter yesterday from Iowa, in which Mrs. Carpenter states that — will leave Iowa for the winter, some time next week, and is 235 anxious to have the matter closed up before she gets away.

I do not know where she is going but I write her today, as we will have to have her execute a deed when we pay the money, the deed she having executed and left with Parsons in Kansas City I think is not sufficient; so it is important that we get this matter in shape so that we can close out the Hopeful interests as soon as possible. If I should come to Lincoln Court I will write or wire you so that I can see you should you not come to El Paso before.

Yours truly,

"EXHIBIT L." W. H. W.

PARSONS, October 10th, 1901.

H. B. Hamilton, El Paso, Texas.

MY DEAR HAMILTON: I have sent two more visitors away satisfied with the showing. They were men that Mr. George sent representing some people at Canton, Ills. Reached here last Saturday and returned apparently satisfied, next thing is to show it by currency. I am expecting daily to hear of more funds coming and hope to be able soon to get the Parsons matter closed. Mr. and Mrs. Parsons returned Saturday for a short time. They are very pleasant and will in no way be a hindrance. Hope to see you soon.

Yours very truly,

J. M. RICE.

"EXHIBIT L." W. H. W.

PARSONS, November 2nd, 1901.

MY DEAR HAMILTON: Yours 26th at hand this mail. The 236 Canton people are at work and have had two other parties here since their return and things are looking better. It won't be long now before we will begin to get out of the woods. Have to go to Lincoln Monday. Summoned on Grand Jury but hope to get excused as don't see how I can possibly spend the time. Hope you are well.

Yours very truly,

J. M. RICE.

"EXHIBIT L." W. H. W.

115 S. PINE AVE., AUSTIN STA.,
CHICAGO, ILL., Feb'y 18th, 1902.

H. B. Hamilton, El Paso, Texas.

MY DEAR HAMILTON: Yours at hand of the 14th. I note what you say of the necessity of having the record of the director's meetings in the proper shape and think it best to have you come direct here as soon as convenient and we will have a meeting called and go over everything and if necessary re-arrange the books. Enclosed I send you a check for \$150.00 for expense account, and will wire you when to come possibly Friday. I will arrange so that when you return you can stop at Kansas City and also wherever Mrs. Carpenter is, and have the deeds made and placed in bank and make a partial payment so that we may know that they can be taken up at our convenience. The only reason that I think it would be best to wire when to come is that I want to have everything in readiness so as not to delay you here longer than necessary. Don't think it best to tell Mr. E. S. Parsons that you are coming here. They are stay-
237 ing in what is called Court House Block, don't remember the number.

Hoping you and family are well, I am, as ever

Yours truly,

J. M. RICE.

Office of the company is now being fitted up at 314, Tacoma Building, Chicago, Ills., so if necessary to telegraph me, do so at the above number.

Eagle Mining and Improvement Co.,
314 Tacoma Building.

WHITE OAKS, N. M., February 11th, 1903.

H. B. Hamilton, El Paso, Texas.

MY DEAR HAMILTON: I returned here yesterday and among other things find that McKie has started proceedings against Dolph and Robinson and has garnisheed us and that we must make answer, etc., and as D. & R. have employed Messrs. Hewitt & Hudspeth to look after their matters I think it would be as well that they attend to the matter for us, and in talking to Mr. Gaylord over the telephone he said that he had given you the papers and that you would make the answer, and as I had already mentioned the matter to Mr. Hewitt and asked him to take care of the matter, inasmuch as we wish to make common cause in the case, I thought would write you and ask you to send the papers to him here, and I will have Mr. Gaylord come over here Monday and have the answer made, and see if the matter could not be disposed of without any trouble to us or you. If you have already made the answer, please advise H. & H., what has been done. Hoping you are well and enjoying the winter, I am

Yours truly,

J. M. RICE.

Please forward papers at once to H. & H.

Am to go to Parsons tomorrow.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, February 11th, 1903.

J. M. Rice, Parsons, N. M.

DEAR SIR: I was surprised at receiving your letter this morning. Expecting I had authority of representing the Company I have entered the appearance of the Company and have entered into an agreement with the counsel on the other side that we are to have until April to file the answer, but of course if you prefer the other counsel to look after it in connection with the other matter I have no objection.

I wrote Sturgeon two or three letters explaining the matter which he must have received while you were in Chicago. I wrote to him in Chicago knowing that you were there and expecting of course that he would show you the letter. As I told him, I think the Company want to be careful and pay no money to Dolph and Robertson until this matter is settled. However, your counsel I presume at White Oaks will advise you fully.

I have also written to Sturgeon several letters asking him if he could not send me some money on the Eagle work. He promised sometime ago to send me a remittance as I am needing the money very badly and would like to have it. I wish you would let me know what the chance is to get some and what Sturgeon is likely to do. Please let me hear from you.

Yours truly,

Eagle Mining and Improvement Co.

PARSONS, NEW MEXICO, February 14th, 1903.

MY DEAR HAMILTON: Yours at hand and in reply would say that the matter referred to in my letter to you was simply thinking that it might save you trouble and bother by having H. & H., take care of the case in connection with D. & R. You have the authority to represent the company all right and I don't want you to feel that I intended to do anything to interfere with you. I cannot see how the American can have anything to do in the matter. Mr. Sturgeon wired me to send you copy of his contract with D. & R.—(enclosed) please find it. Should Mr. Monk forward one, please return me this copy.

Mr. Sturgeon went east Tuesday and we hope for good results. We have been up against it hard for funds lately, but think we will soon be easier. Mr. George has broken so badly that it became necessary to ask him to take a vacation. I am going to try to get to El Paso in few days and can then explain things more fully. You can rely on my helping you out as soon as possible. I want to see a

Mr. Kelly at Las Cruces in regard to the Gaylord matter soon as can get time to come to El Paso.

With kind regards to your family,

Yours truly,

J. M. RICE.

"EXHIBIT L." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, *February 19th, 1903.*

240 J. M. Rice, Parsons, N. M.

DEAR RICE: Yours containing copy of the contract between Mr. Sturgeon and Dolph and Robinson, in reference to Helen Rae mine, received. I do not notice my assignment of this contract from Sturgeon to the American Gold Company. Has Sturgeon made an assignment of this contract to the Company and has he placed a deed in escrow to be delivered to the Company upon the compliance of the conditions of the contract. In other words, has the Company any paper or document signed and executed by Sturgeon to show that the Company have any interest in this contract or in the property covered by it. If so, I will need a copy of that also to prepare the answer of the company to the garnishment proceedings. The Company will have to set up all the facts as they exist so as to protect itself in the proceedings. I will send the papers to Messrs. Hewitt and Hudsped and let them prepare the answer. As I stated to you, I think, in my former letter the Company should not under any circumstances pay to Dolph and Robinson any money until this matter is settled, for if they have the money to make the next payment they should reserve enough of it, Fifteen Thousand Dollars, to recover this judgment, if it should be obtained. This is the only safe way for the company to protect itself. If they should make the whole of the next payment to Dolph and Robinson, they would become liable to McKie, if he gets any judgment and would have to pay it. You spoke of wanting to see Kelly in reference to the Gaylord matter. I do not think he is the man you want to see as this matter was controlled by the trustee and not by the referee. Parker and his attorney can 241 control the matter. I hope Sturgeon has succeeded in the east and that you will have ample funds to push things along. I have received several letters in the past few days from eastern parties in reference to the companies. Among others, I received a day or two ago, a letter from parties in Penn. making inquiries as to the mine. Its prospects, titles, development, etc. He says he is the representative of a syndicate and well prepared to invest in a large block of stock, if they can get satisfactory information to the questions asked. I will try and reply to them satisfactorily today or tomorrow.

I also received some letters from the Canton people in Illinois. These people seem to want a lot of information which I do not think is important for me to give them.

I hope to see you soon.

Very truly,

Diet. K.

10-228

"EXHIBIT L." W. H. W.

Eagle Mining and Improvement Co.

WHITE OAKS, NEW MEXICO, *February 27th, 1903.*

MY DEAR HAMILTON: Yours received at Parsons and contents noted. There is no contract made between Mr. Sturgeon and the American Company as to the Helen Rae group as far as I know. I drove over here day before yesterday and am to be here again next Monday or Tuesday, provided the weather does not continue to get worse. The R. R. has been blocked north of here for two days and no telling how much longer it will be before they 242 get it clear again. We have about $1\frac{1}{2}$ feet of snow at Parsons and the divide is almost impassable. I am going to try to get home today.

Yours very truly,

J. M. RICE.

You did not send those papers to Mr. Hewitt.

"EXHIBIT L." W. H. W.

Eagle Mining and Improvement Co.

WHITE OAKS, NEW MEXICO, *March 7th, 1903.*

MY DEAR HAMILTON: Yours of the 2nd at hand. I appreciate what you say about the assignment of contract to the Company and know that it should have been done, but think will be no question about the satisfactory adjustment before the final payments are made, even if anything should happen to Mr. Sturgeon there will be no trouble that I can foresee. I will, however, bring the matter to Mr. Sturgeon's attention and have it fixed at once. We have been having such miserable weather lately that things have been at a stand still with us. I have been trying to get down to El Paso and hope to soon. Kind regards.

Yours very truly,

J. M. RICE.

"EXHIBIT L." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, *March 9th, 1903.*

Mr. J. M. Rice, Parsons, N. M.

DEAR RICE: Your letter received. I had a letter from 243 Sturgeon in which he said he had made no assignment but had intended doing so and he asked me to prepare and send one. So on Saturday I prepared and sent to him the necessary assignment of the contract from him to the company, vesting in the company all of his rights under the Dolph and Robinson con-

tract. This contract should reach him tomorrow, when I presume he will execute it, or if he does not execute the one which I sent, he will change it in such form as may suit him and then execute it sending me a copy. I will then have all the papers necessary to prepare the answer in the McKie case, and as soon as I get this I will prepare the answer with the papers and will either send them to White Oaks or will come there myself. If I can arrange to do so I will come to White Oaks with the papers and explain them to Hewitt. Should I come to White Oaks I would like to meet you there as I want you or Gaylord to sign the answer before it is filed. I will try and communicate with you a few days in advance so as to give you time to reach White Oaks. We have until the first of April in which to file the answer. I hope the weather will now be settled so that trains can move regularly and we can get our mail and you may be able to get around in the mountains.

Have you heard anything lately from Ferguson? Write me if there is anything new.

Yours truly,

Dict. K.

"EXHIBIT L." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, March 23th, 1903.

244 J. M. Rice, White Oaks, N. M.

DEAR RICE: Enclosed please find the answer of the garnishee American Gold Mining Company, in the suit of McKie. You will observe that on the fourth page there is a place for your signature and an affidavit which I have written out for you to sign. Please sign this affidavit and swear to it before a notary public and send it at once to Hulbert, District Clerk at Lincoln. It must be filed before the first so please sign this and send it. I expect the papers today from Hulbert and will send the deeds immediately to Hewitt for execution. The trains being late is the cause of the delay.

I sent Mrs. Rice her hook for her glasses, but on investigation I could not get you the top for your pen. It seems that they have none of that make in stock. If you should come down sometime and bring the other part of the pen they could probably fix it.

I hope everything is going satisfactorily.

Yours truly,

"EXHIBIT L." W. H. W.

H. B. Hamilton, Attorney at Law, El Paso, Texas.

MARCH 28TH, 1903.

John M. Rice, White Oaks, New Mexico.

DEAR RICE: I have today received from Lincoln the description of the mines as contained in the Patents and have prepared deeds

245 and sent them to Hewitt for his execution. I suppose he will execute them and send them at once to the Hampden Trust Company of Springfield, Mass., with the escrow agreement. I hope you are getting favorable word from Sturgeon. I hope also that you are having the Old Abe run on profitable ore if it is possible and that things may work out satisfactorily. I presume you received the answer in the garnishment proceeding which I sent you. If so, do not neglect to send it to Lincoln to Hulbert as it must be filed with him as District Clerk.

Yours truly,

Eagle Mining and Improvement Co.

WHITE OAKS, NEW MEXICO, *March 9th, 1903.*

H. B. Hamilton, El Paso, Tex.

MY DEAR HAMILTON: I received the papers in the R. & Dolph cause and executed and forwarded to Mr. Hulbert at Lincoln yesterday's mail; also sent copy of charter received from Santa Fe to the Recorder so that all of the necessary records will be complete tomorrow. Mr. Hewitt received the deeds today and they will be executed and forwarded tomorrow. Have not heard from Mr. Sturgeon since he left, presume he went directly to New York. Thanks for the pin my wife received yesterday. With kind regards,

Yours truly,

J. M. RICE.

"EXHIBIT L." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, *April 11th, 1903.*

246 J. M. Rice, White Oaks, N. M.

DEAR RICE: Have you any late information from Sturgeon? I received a couple of wires from him while at Springfield last week stating that the deal was closed and asking him to forward forms and specifications of mortgages under the laws of New Mexico. I sent them two forms of deed of trust to secure bonds, or rather I sent them to the Hampden Trust Company. I presume Sturgeon received them. While Sturgeon was here I discussed the matter with him as to the importance of having the stockholders of the Eagle Company ratify the action of the Board of Directors of the Eagle Company in surrendering its option on the Old Abe and allowing the new company to become the purchasers. While this option which you had on the Old Abe for the Eagle Company was really a verbal option, with no contract or deed to the property, yet, having gone on and advertised the purchase of the property and having sold a large amount of stock and acquired a large amount of money from the stockholders which went into the Old Abe property, the stockholders in the Eagle Company acquired an interest in the Old Abe option that is such an interest as stockholders would ordinarily

acquire in any corporation in which they held stock. And the Eagle Company, determining to give up its option, based upon its inability to take the property and to surrender it to the new company. I think it would be safer to have the ratification of this action by the stockholders of the Eagle Company and avoid any danger which might arise from an attack on the part of dissatisfied stockholders. There are some grumblers and dissatisfied stockholders and we do not want to leave any direct option to give them an opportunity to make 247 an attack on the Eagle Company or its Board of Directors and to make the matter safe I talked the matter of ratification over with Sturgeon and he said there would be no difficulty in getting the stockholders of the Eagle Company to ratify the action of the Board in surrendering the Old Abe and allowing the new company to take it up. I do not know whether he has discussed the matter with you or not. This can be done after the present deal is carried through.

Yours truly,

“EXHIBIT L.”

Eagle Mining and Improvement Co.

WHITE OAKS, NEW MEXICO, April 30th, 1903.

MY DEAR HAMILTON: Yours of the 11th at hand. Mr. Sturgeon and myself discussed the ratification of the sale of the Abe to the new Company and thought that should be done as soon as it could be after the deal was an accomplished fact. From my letters from him it looks very favorable all around. A party of five from Elgin were here to look over the American and returned pleased last night, accompanied by Mr. Gaylord. The 14th of this month, tomorrow, we are entitled to deeds on some of those tax certificates that we took up last year. Don't you think it would be well to get the deeds and placed on record at once?

Yours Truly,

J. M. RICE.

“EXHIBIT L.” W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, April 14th, 1903.

Mr. J. M. Rice, White Oaks, N. M.

248 MY DEAR RICE: I think if the three years has expired on any of the tax certificates, which you signed to the Eagle or American Companies last spring, that you should get the sheriff to make a deed to that portion of the property to which you would be entitled to a deed under the statutes. I have no memorandum of it here, but you, of course, have the certificates which were signed by the County at the time the taxes were paid and these will show the days of the sale of each piece of property and from that you can tell, or rather the sheriff can tell, to which portion you would be entitled to a deed. The records, of course, in the sheriff's office will also

show, and I think it would be well to have the sheriff make a deed to all that portion to which you are entitled to a deed and have them put on record. I am glad you are getting favorable news from Sturgeon and I hope I may be able to carry the entire matter through before long.

Yours Truly,

"EXHIBIT L." W. H. W.

Eagle Mining and Improvement Co.,
White Oaks, New Mexico.

APRIL 15TH, 1903.

MY DEAR HAMILTON: Yours at hand of yesterday contents noted. I found four certificates of sale that date of sale was April 14th 1900, one to the American and three to the Eagle M. & I. Co., which I today sent by registered mail to E. W. Hulbert requesting him to have deeds made and recorded at once. If Jamie Parker is in El Paso, wish he would write me when he can meet me in White Oaks. Will go over to Parsons tomorrow and return about Sunday here. With kindest regards,

Yours truly,

J. M. RICE.

Things are moving right.

"EXHIBIT L." W. H. W.

Eagle Mining and Improvement Co.,
Parsons, New Mexico.

APRIL 17TH, 1903.

MY DEAR HAMILTON: I have just been notified by telephone that the sheriff has been ordered to execute that Boone judgment that Henley was trustee in and I paid one-half in two different payments to Wharton and I was then ordered not to pay him any more. What shall I do about it? You will receive this Monday A. M., at which time I will be at White Oaks. If you think necessary to come up, notify me by wire.

Yours truly,

J. M. RICE.

"EXHIBIT L." W. H. W.

Eagle Mining and Improvement Co.,
White Oaks, New Mexico.

APRIL 19TH, 1903.

MY DEAR HAMILTON: I mailed you letter from Parsons that you will probably get same mail as this. I also have written Browne & Manzanares Company asking them why the sale was ordered at this time and through Mr. Wharton they had written me only a few days ago for some evidence that I had paid 50 per cent of the judgment, claiming that they could get no satisfaction from Wharton or Henley. I sent them Wharton's receipt for

\$980.00 and one day I received their acknowledgment of the receipt and then comes the order for sale. Now the question is what are we to do in the matter? If you write me tomorrow, Monday, I will get mail before leaving for Parsons Tuesday.

Yours truly,

J. M. RICE.

"EXHIBIT L" W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, April 20th, 1903.

J. M. Rice, White Oaks, N. M.

DEAR RICE: I received your letter and at once wired you that I could be there tomorrow night, or rather will go up tomorrow night so I can be in White Oaks Wednesday morning. I want to see Owens, the sheriff, when I come up. I want to see his execution and the instructions he has for carrying it out. I may also want to go to Lincoln and examine the judgment. I have a statement from Fitch, the attorney who represents the judgment, which he wrote me sometime ago and he claims that Wharton and Hinley did not pay over the amount of money collected from you on the judgment, and that they are seeking to remove Hinley on that account and also to get the balance of the money. The sheriff, of course, has sixty days in which to make the money and his execution good, and it is not necessary for him to advertise the property for sale until within 25 or 30 days from the time of the expiration of his execution, but I will see the sheriff as to this when I come up, unless after receiving this 251 you think it would not be necessary for me to come, in which event you can wire me. I shall come unless I receive instructions from you to the contrary.

Yours truly,

"EXHIBIT L" W. H. W.

SOCORRO, N. M., April 27th, 1903.

J. M. Rice, Esq., Man'g'r Eagle Mining & Improvement Co., Parsons, N. Mexico.

DEAR SIR: Browne & Manzanares Company have sent me your letter to them of recent date, stating that the American Mine has been advertised for sale under the judgment in Boone vs. Vanderbilt Gold Mining Co. This is the first knowledge I had of the matter. Two or three weeks ago I commenced proceedings on behalf of B. & M. Co., to oust Henley as trustee, because for failure to perform his duties among which specified his failure to collect this judgment. But the principal charge against him was his failure to account for a large part of the moneys he had already collected from you on his account. Both he and Wharton know this, but it would look as if they were attempting to divert attention from the default, by the course they have adopted. While I do not propose to let them escape in this manner, I have no control over them or this

execution. It would seem to me that the best thing for your Company to do would be to pay it at once.

Yours Very Truly,

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, April 28th, 1906.

J. M. Rice, Parsons, New Mexico.

DEAR RICE: On my return home I received notice from Mrs. Brooks, of which the enclosed is a copy. I have also written Sturgeon. I presume Sturgeon has received notice also, and that they will take care of the matter. It would be too bad to let this amount of stock be put upon the market and sold to satisfy the remainder of this debt. So I hope it can be arranged.

Yours Truly,

EXHIBIT L." W. H. W.

Eagle Mining and Improvement Co.

PARSONS, NEW MEXICO, August 29th, 1903.

MY DEAR HAMILTON: Enclosed please find letter just received from Browne M. & Co. that explains itself. I could hardly think that they had instructed this attorney to force the matter. You can do as you think best about taking the matter up with Mr. Browne, it might be well enough to have the order re-called if possible. Everything quiet here.

Yours Truly,

J. M. RICE.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, May 2, 1903.

J. M. Rice, Parsons, N. M.

DEAR RICE: Yours containing Browne's letter received. I have also had a letter from Fitch and expect a letter from Browne to-day. I think there will be no objection on the part of Browne and Fitch to withdrawing the execution and taking the obligation from the American Gold Company to pay off the judgment by October. And I have written to Wharton to talk the matter over with Henley and see if this cannot be done. I will also hear from Browne and Fitch again probably in a day or two.

I hope you are getting favorable news from Sturgeon.

Yours truly,

"EXHIBIT L." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, May 14, 1903.

Mr. J. M. Rice, Parsons, N. M.

DEAR RICE: I have just received a letter from Tilden at Garrettsville, in which he states to me that Prof. Wilson of Scranton, Penn., desires me to answer certain questions which he propounds, with reference to the condition of the property of the Eagle Mining 254 and Improvement Company, its titles, charter, by-laws, etc. From Tilden's letter I am unable to gather exactly what Prof.

Wilson wants, except that he wants to know fully as to the condition of the titles, how much of the property is paid for and whether the titles are in the Company. There are some other questions which he seems to want to know, which I cannot get at exactly from Mr. Tilden's letter, so I have this day written to Prof. Wilson, stating to him that if he would put the question into form, asking the detailed information which he desired, I would give it to him. I presume all of the deeds which were executed last fall when I was in Parsons, had been filed for record and are now on record. Am I correct in this? I have written to Leslie Ellis to furnish me a list of claims to which the company have title now of record. He also wishes some information, I believe, as to the by-laws of the company, which of course I can get from Sturgeon, as you probably have not got them at Parsons. I presume the title to most of the property is in the company. I dislike to have to go into any detailed statements to him of the condition of the "Hopeful" as the company, you know, only have a deed to one-sixth of it.

I had hoped that we might have had the money before this out of the Old Abe deal or from some other source so as to have put the "Hopeful" title in better shape. Of course the John's part of it will be fixed up as soon as the matter can be carried through the courts, closing out the interest of the heirs. If the amount due on the Parker suit against the company and the half interest which I hold could be closed up and deeded to the company, we could explain the delay in the John's interest, but of course this cannot be done until you can get the money. I will probably hear from Wilson again

255 inside of a week or ten days. I will certainly make to him the best statement I can consistent with the facts. I write you this so that you may be advised in the matter. It seems that he has written to Tilden and asked Tilden to have me answer the questions. I preferred to have them direct from Wilson himself, besides I cannot tell exactly what he wants from Tilden's letter. I presume he will write me himself fully. I hope things are moving satisfactorily and that you may get the money all right and get it to moving again. I had one short letter from Sturgeon in which he stated that Wilson had promised you \$100,000.00 from Scranton, which he hoped to get this month. I sincerely hope for us all that time may come.

Yours truly,

"EXHIBIT L."

Eagle Mining and Improvement Co.

PARSONS, N. M., May 15th, 1903.

MY DEAR HAMILTON: Yours at hand of the 14th as to Mr. Wilson's questions on titles, I don't think it necessary to name him individual claims. You will no doubt receive the number of deeded claims from Mr. Ellis. I had the deeds recorded last season and there are enough to make showing that would show that we own enough. It is not necessary to say that we only own one-sixth of the Hopeful, for we really own it or will, even if the record does not show it. Wilson was very well pleased with everything and he must have necessary information, but nothing that he don't need to know. Things moving slowly but surely. All well.

With kindest regards,

Yours truly,

J. M. RICE.

"EXHIBIT M." W. H. W.

Hon. H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, July 5th, 1902.

Mr. J. S. Tilden, Garrettsville, Ohio.

DEAR MR. TILDEN: Your letter of June 29th in relation to the gypsum properties received. I am inclined to think that the matter has probably passed beyond our control. I will, however, inquire and if it is still open I will advise you.

Mr. Rice went to Chicago on Tuesday. Things seem to be moving very well. I went to Kansas City on Monday. Took up the other two deeds for the other owners of the Hopeful mine; that is, the deed of Mrs. Carpenter and Mr. C. C. Parsons. These deeds were made a long time ago and were made by them to me and I paid the money into the bank, taking up their deeds, and I will convey to the Company as soon of course, as the company can pay me the ten thousand dollars which is coming to me, which I hope they will be able soon to do. In the meantime we have the Parsons people cleared up and out of the way, and there will be no trouble in that direction.

Mr. Rice has also made a \$2000.00 payment upon the John's interest, held by the Exchange Bank at White Oaks. This I think will hold that for a little time until we can make final payment on that.

I hope through the influence and favorable opinion of the parties who have recently visited the mine, from South Bend and other places, that the stock will now go right rapidly and give us abundant means to make these payments and carry the matter along.

If you have any information as to how things are going

257 up there, would be glad to hear from you. I can come to Chicago most any time that I may be needed, and will probably come certainly at the next meeting of stockholders if not before.

Yours truly,

"EXHIBIT M."

Letter Press Copy of Letter.

'8, 11.

Mr. J. S. Tilden, Garrettsville, O.

DEAR SIR: As I wired you yesterday, Mr. Sturgeon and Mr. Rice thought it advisable for me to remain over here until a payment could be made upon the Brooks matter, and the papers executed. They said \$5,000.00 could be paid on Saturday, but it could not be paid until today. So I have today paid Mrs. Brooks \$5,000 upon your option, which is the payment intended to be made on the 20th. The papers have all been signed and executed by her, and are deposited with your option in the Chicago National Bank, until the 23rd of this month. Making the payment now of \$5,000.00 I got them to consent to an extension of the time for the execution of the notes until the 23rd, and I have had her execute the papers to you. First, there is her conveyance of all her interest in the Eagle property, including her interest in the Eagle property or stock in the company. This conveyance has been properly executed and acknowledged by her. Then there is an order from her on Mr. Rice to issue and deliver to you any stock which may be coming to her in the Eagle company. Then there is the order on Mr. Stone for all of the papers left in his hands. Then there is also your option from her, with the extension of time thereon to the 23rd. All of these papers I have had put in an envelope and deposited 258 in escrow with the Chicago National Bank, with instructions to the bank to hold them in escrow until the 23rd, and that if by that time you make and execute to Mrs. Brooks the six several promissory notes, in the manner and for the amounts as specified in your option, then the bank are to deliver the papers to you. If not executed as provided in the option by the 23rd, they are to be returned to Mrs. Brooks. You will see, therefore, that while the matter is now closed, and the papers are all executed, yet there remains one important thing for you to do. That this, the execution of these notes by the 23rd of August, in accordance with your option, to the satisfaction of Mrs. Brooks, or rather of Mr. Parker. I have had several interviews with him in reference to these notes, and of his taking yourself, Mr. Anderson and Mr. Oleson on the notes. He stands, however, as he did when you were here. Says he does not wish to agree to do it without investigation. I think he will investigate Anderson and Oleson within the next day or two, and may write you. Mrs. Brooks, I understand, expects to come to your town within a day or two, and look into your affairs. I write you this that you may be prepared for it. It is important now that these notes be made in order to close this deal finally. We have this disturbing element now out of the way, and you know the importance of keeping it there. Should he not be willing to accept Anderson and Oleson alone, then you may have to make some other arrangement. It might be possible if you have good luck in selling

stock down there by the 23rd, and he should not *we* willing to accept Anderson and Oleson, you might be in a position by 23rd to pay them \$5000.00 more; and in that event they would certainly accept Anderson and Oleson. Of course, every payment that you make lessens your liability on the notes. Of course you are 259 making this purchase, and can arrange the matter on some basis, and of course even if the Company should come to your relief and help you out on the payments, this money of course would have to be refunded to the Company out of your sale of stock. Of course as I have told you the Company as a corporation cannot buy this stock. If it could and should buy, the interest in the stock would have to go to the Company, but I presume that you and Mr. Rice understand that, and will arrange it satisfactorily. The only thing for you to — now is to be sure and get these notes executed to the satisfaction of Mr. Parker by the 23rd. Mr. Parker leaves here in a day or two, as he tells me, and will not return before the 22nd; he may however, write you before going.

Hoping you may carry the matter out satisfactorily, I am

Yours truly,

H. B. HAMILTON.

"EXHIBIT M." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, *August 25th, 1903.*

Mr. J. S. Tilden, Garrettsville, Ohio.

DEAR SIR: I have not heard from you in relation to your success in closing up the Brooks matter in Chicago. I presume you attended to it as the time was up on the 23rd. I am also anxious to hear from you and to hear how matters are progressing in Chicago in reference to the sale of stock and the realization of money to move things ahead and particularly to close up the deeds to 260 the remaining interest of the Hopeful Mine. As stated to you in Chicago, this is important and must be done as soon as possible. In order to meet inquiries and objections raised that the company are not in possession of the full titles to the Hopeful mine. I impressed this upon you, personally, so that you, through your company, might give it attention. I will be glad to know how things are going in Chicago. I have not yet heard from Mr. Rice as to whether he is ready to complete first payment of Fifty Thousand Dollars on the Old Abe mine. I am going up there tonight and if he is ready I will look into the title and prepare papers for the transfer. As I told you in Chicago, there is a suit pending in the Supreme Court of the United States affecting a quarter interest in the Old Abe Mine. While I do not fear, very much, the result of the suit, yet it is still pending as I am advised, and hangs over it and of course prevents a perfect title. When I examine into the matter, when we come to the transfer, I will write the company making them a report as to the condition of the title. I presume

However, judging from Mr. Rice's course that as he has contracted for the purchase of the mine they will not allow the pendency of this suit to stand in the way of their buying, but I think it proper for the Company to know its exact status so that they may know what, possibly, to look for.

Yours Truly,

"EXHIBIT M." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, November 11th, 1903.

Mr. J. S. Tilden, Garrettsville, Ohio.

261 DEAR SIR: I presume you saw Mr. Rice in Chicago, as he went on to adjust some matters between he and Mr. George. I have just received a letter from Mr. George and while his interview with Mr. Rice seems to have allayed somewhat his fears in the matter, he does not still seem to be altogether satisfied. He has written me in reference to the law and the mode to be adopted for an increase of the Board of directors from 5 to 9. I have today written him fully explaining the method to be adopted to amend the charter to increase the board of directors. He seems to have a desire to do this. Sturgeon writes me that while they are taking in some money it is not very rapid. I went to the mines two weeks ago, at the instance of Mr. Rice and prepared deeds to the company for about one hundred and sixty claims. This, however, did not include the Hopeful which I think the company should own and should take up at the earliest possible date. The importance of doing this I called your attention to before. The discovery of the fact that the company does not own this property, I think, operates more or less injurious to the company in the sale of the stock. Mr. George advises me that there is some hesitancy or disinclination on the part of some of the capitalists, who have visited the mine, to buy stock or go into it. He does not give me the exact reason why these people decline to go in, but he leaves me to infer that there are one or two causes or objections to their taking hold. Inquiries are also coming here with reference to the property of the company, its business management and its ownership of the title to the property. I tell you these facts in order that you may know all that I know in reference to it. I do not know what success or difficulty you are meeting in the sale of the stock. For some reason or other the two last parties who visited the mine, as I am advised, have not taken 262 hold very enthusiastically. There is some reason for this because they seem to be fully satisfied with the property. You perhaps know the cause. Now I am anxious to do everything possible to aid in pushing this matter to a successful issue. I think and feel you will adopt every method to prevent a failure, and I believe that you are reaching a turning point in your enterprise by which it may go up or down. I cannot, of course, write you all I would like to about the matter. Of course I know nothing person-

ally, except in a general way, from information obtained from other sources, as I am not on the ground, but from what I do know you are approaching a critical point. If there is anything I can do or say at any time to aid you in tiding the matter over, I am ready and willing to do so. I do not know as I ought to push my suggestions upon you, but my relation to you and my relation to the company makes it a duty I think, to give you all the information I have. Hope you will receive and treat it confidentially.

Yours truly,

"EXHIBIT M." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, November 17th, 1902.

Mr. J. S. Tilden, Garrettsville, Ohio.

DEAR SIR: I wrote you quite a lengthy letter some days ago, but concluded after writing it not to send it.

Mr. S. P. Dickenson has been here from Chicago in the interest of some parties. He spent several days at the mine and came 263 down here to see me. Mr. Dickenson was formerly connected with the American Smelter Company when it operated the Smelter at Socorro. He is a fine assayer and metal-urgist and came down to examine the mine in the interest of some advertising as well as some parties in Chicago, who contemplate investing. Seeing that I was connected with the company as attorney he came to see me, having known me a number of years he wanted all the information as to the property which I could give him. He inquired especially as to the titles. I gave him a statement with reference to them. Of course I had to tell him that the company had only a title to one-sixth of the Hopeful and as to how the remaining five-sixths was held. He seemed well pleased with the property and thinks you have a great undertaking and I am satisfied will give a favorable account of it.

I hope you are getting along well with the sale of stock and that you may be able to take up the Hopeful and other deeds soon. As I wrote you a few days ago, at the request of Mr. Rice I went to the mine and made up transfers, deeds and papers conveying to the Company about one hundred and sixty claims. These did not include the remainder of the Hopeful.

Inquiries are coming here frequently to me and to others with reference to the property, its titles, etc., and is highly important as I have heretofore stated to you, that you close up these Hopeful titles at once, or as soon as possible.

I also had letter from Mr. George wishing to know what to do in reference to increasing the board of directors, that is, the course to be adopted under the law for doing this. I have written him in the matter.

There are many things which I mentioned in my other letter, which it is not necessary to repeat here. Let me know how you are getting along.

Yours truly,

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, December 10th, 1902.

Mr. J. S. Tilden, Garrettsville, Ohio.

DEAR MR. TILDEN: Your letter of December 4th received. I am gratified that the outlook is so encouraging of the prospects for the Eagle Mining Company in the future. I hope your expectations will be fully realized.

I met the expert sent out by the Chicago people or the Chicago newspaper and had a pleasant visit with him here. He is a man I have known for years, and he came down here to see me with reference to the Eagle Mining Company, its titles and its property. I told him the situation. I had several interviews with Mr. Grant at the time and before he arranged with Mr. Rice to have the ore shipped to Denver and discussed the advisability with he and Mr. Rice of shipping the ore to Denver making the test to determine the quality of the ore and the character of treatment required. He is quite a bright man and thoroughly understands his business and if his company undertakes the construction of a plant I am sure it will be successful and accomplish the purpose intended. I am glad that the Company have settled with old man Parsons and have gotten him out of the way. I am getting anxious to have the balance of the Hopeful straightened out. It seems to me the Company should not delay this longer. If the Company feel they must keep the Old Abe I hope they will succeed in getting the payments made without difficulty. Confidentially, between you and I, I think the

265 Company had better lose Fifty Thousand Dollars than to lose the One Hundred and Fifty. It would be a long story to go into details and tell you why I make this statement and to make it now would be useless and perhaps out of place, after the Company are determined to buy the mine. I say, though, that this is and has been from the beginning my impression of this purchase. I would not say this, of course, to anyone outside, or to anyone, to any other member of this company at this time. As my opinion of the question has never been asked I deem it unnecessary to volunteer it to anyone except you. And my relations to you lead me to make the statement to you in the strictest confidence of course. At some future time when I meet you I may go into detail and give you the reasons for this statement. As you know, there is a suit pending for a quarter of the mine, which of course the company will have to look after if they continue the purchase. I presume as the mine is not yet paid for the Old Abe Company will take care of this litigation, at least I assume so. I hope the company are getting money together to take care of its obligations as they mature. I think I shall send in to the company on the first of January my account for my services up to that time. I have spent considerable time with the company as you know, closed my office and neglected my business to make several trips to Chicago. Spent a good deal of time

there in looking over the troubles with the Knight and Brooks matter which fortunately we succeeded in adjusting upon a basis I think, which is going to result in a large benefit to yourself and others who have acquired an interest and have saved the company from wreck and I think destruction. I will send in my bill I think in January and ask to have it allowed and paid. I am also contemplating tendering my resignation to the company as its attorney, owing to the condition of my own business matters and my desire to get this matter straightened up between myself and the company. I simply make this suggestion to you. I have not yet disclosed such intended course to the company or Mr. Rice which I think I shall do. Of course, if I withdraw as attorney for the company I would want my account with the company closed and also want them to take up the Hopeful deeds to the half interest in the mine which I hold. There are many things I would like to discuss with you could I see you, but I do not care to write them now. If you have any meeting in Chicago in January or about that time and you think it important for me to go to Chicago I will do so. I throw out these considerations to you and you can consider them and write me. Any information or help I can give you or the company either now, or at any future time I am willing to do so, either here or in Chicago or elsewhere. This course on my part is not prompted by any dissatisfaction with my relations with the company or its officers. These have always been very pleasant and agreeable, but it is owing to my own business partially, and partially by desire to get the Hopeful matter settled up. I know of nothing now that is likely to give the company any immediate trouble in the way of litigation and hope nothing of the kind will arise. Hope you may get the Brooks matter closed up. Don't neglect that stock matter in the Brooks business.

Yours truly,

"EXHIBIT M." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, Dec. 20th, 1902.

267 Mr. J. S. Tilden, Garrettsville, Ohio.

DEAR TILDEN: Mr. Grant of the Colorado Iron Works has been up to the mine several days, going over the matter with Mr. Rice and is here now. I have spoken to him, going over the matter of the Hopeful proposition and to the construction of the plant thereon. He thinks you have a wonderful proposition and one which will pay for the construction of a thousand ton mill. He thinks, however, of course that as the Company will not be able to construct so large a stamp at the start that it will be advisable to begin the matter in a smaller way and construct the plant probably of a hundred tons or more capacity and increase it from thereon. We have gone over the matter very fully and he is positive as to the outcome of the matter if the Company can get it started.

There is some talk of a meeting in January in Chicago of the stockholders, or a large proportion of them to take up the matter of

constructing the mill. Mr. Sturgeon is now at the mine with Mr. Rice with some gentlemen from Chicago. Mr. Sturgeon wrote me that he would expect to see me while he was here. I have written him to Parsons and White Oaks asking him to wire me when he would meet me. I am very anxious to go over some matters connected with the business, with Mr. Sturgeon and Mr. Rice. And if he will let me know, I will either meet him at White Oaks or Parsons. They will probably go to Denver sometime about the first or immediately after the first then I understand to Chicago.

If it is necessary or advisable for me to be at Chicago at any meeting or gathering of the stockholders or directors in January I can go. I still have in view what I wrote you in my last letter, as I am anxious to get the matter of the Hopeful titles cleaned up 268 and get the matter between myself and the Company closed.

It is becoming more important all the time to do this.

I would like to hear from you.

Very truly yours.

Dict. K.

“EXHIBIT M.” W. H. W.

Crane Brothers, Dry Goods, Etc.

GARRETTSVILLE, OHIO, February 12th, 1903.

MY DEAR HAMILTON: I was in Chicago last Saturday and Monday. Mr. Rice was there and started Saturday night for Parsons and Sturgeon started for Boston. We have hopes of raising all the money we need to carry out the plans as originally outlined. Stock is selling rather slowly at Chicago and it seems necessary to interest some capitalist to put up the necessary amount. We have some of them interested to the extent that they will investigate the property.

I mentioned the matter of your bill and Mr. Rice stated that he would see you and attend that matter himself and I believe he will.

The payments on the “Old Abe” are not being made as fast as we would like to have them, but with a little patience on their part we will pay it up.

The Parsons, as you are probably aware, have been paid off and their deeds delivered but there is an interest in the Hopeful group that has not been satisfied. You know however more about that than I do.

I believe Judge that we will be able in the next thirty days to interest strong parties in our enterprise which will enable us to take care of all the outstanding options and erect a large plant of 269 machinery on the Hopeful group. I hope to come to New Mexico in the spring and will certainly call on you.

Promising to be more punctual in my correspondence in the future and with kind regards, I remain

Yours sincerely,

J. S. TILDEN.

"EXHIBIT M." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, *February 19th, 1903.*

Mr. J. S. Tilden, Garrettsville, Ohio.

DEAR TILDEN: Your letter of a few days ago received. I hope your anticipations will be realized in getting the money to carry the matter along, enough at least to take up your obligations and start matters to going with a mill on the Hopeful. I still insist that this is the bases of your success and the sooner you can start this the sooner you can succeed.

I have received a number of letters from people in the east making inquiries as to the property, among others—asking the question specially, "Have the company titles to this property and is it paid for?" "Is the management of the property of sufficient experience in the handling of mines and mining enterprises so as to make it a success?"

They ask these and similar questions. I have and will reply to these letters as best I can trying to give them satisfaction in the way of answering them. They state they have prepared to buy and will buy a lot of the stock.

I also met here Mr. Studebaker of South Bend. I mean the old 270 gentleman. An uncle of the one who is connected with the property and a man of great financial strength. The matter of interesting him in the property has already been presented to him by Mr. Sturgeon and others of the company. In my conversation with him he seemed quite interested and but for the bad weather which has prevailed here for the last few days I could have gotten him to go with me to the mine, but he is on his way from the City of Mexico to Los Angeles and promised me he would stop and see me on his way back in the early part of April and would then go to the mine. He seems to be disposed to take hold of it if he can find matters in a satisfactory condition, and if the mine is as had been represented. This brings to my mind the importance of what I have said to you heretofore of closing up these Hopeful titles. The first question which he would probably ask, which he has not asked heretofore, at least he did not ask me, would be as to the title to this property and whether it is paid for and owned by the company. I think it will be embarrassing and unfortunate to have to tell him as I have had to tell others that the Hopeful property is not owned by the company except 1-6th of it, and is not paid for. I can see and you must see the dangerous and embarrassing effect of this upon him or any other contemplated purchaser. Still it is an absolute fact which must be stated and admitted. I simply call your attention to this to show the importance of getting this Hopeful title straightened up, so that I may not be put in the position and the company, having to say to contemplated purchasers, "The Company does not own the Hopeful property," which is the basis of its operations. I

think the company had better neglect some other matters elsewhere and take this matter up.

271 Mr. Studebaker will be back here in April and I am going to use every effort to get him to the mine.

Yours truly,

Dict. K.

"EXHIBIT M." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, April 11th, 1903.

J. S. Tilden, Garrettsville, Ohio.

DEAR MR. TILDEN: You are perhaps fully advised of the condition of things to the disposition of the Old Abe Mine and of the organization of the new Company who are to take charge of the Old Abe and bond it. While Mr. Sturgeon was here with Mr. Steele of New York going over the transaction, I suggested to Mr. Sturgeon that I thought it was important to have the stockholders of the Eagle Company ratify the action of the Board of Directors of the Eagle Company in the surrender of its option on the Old Abe and allowing the new Company to step in and become the purchasers. The Eagle Company, through Mr. Rice its General Manager, acquired an option on the Old Abe Mine. This option, as I understand now, was merely verbal and that no deeds or contracts were made by the Eagle Company on the Old Abe Company for the purchase of the Old Abe. Under this option, which the Eagle Company held, although verbal, they advertised extensively their purchase of the Old Abe leaving the inference that they had bought the mine and become its owners and upon the faith of that they sold a large amount of stock and realized a large amount of money which was paid in on the Old Abe, and on other things connected with the Company. This would give the

272 stockholders of the Eagle Company an interest in the option of the Old Abe for whatever the option might be worth. And I think the Board of Directors of the Eagle Company in their surrender of the option on the Old Abe and allowing the new Company to buy it should be sustained by ratification of the stockholders. This would prevent the danger which might arise should any dissatisfied stockholders attempt to make trouble for the Eagle Company and its Directors. As you perhaps already know, some of the Eagle stockholders are already becoming very much dissatisfied, as is very naturally the case among so many stockholders, and what I am anxious to do is to protect the Eagle Company and its Board of Directors against any successful attack which might be attempted to be made upon them by any dissatisfied stockholders. I think the plan conceived and promoted by Mr. Sturgeon in organizing the subsidiary company to take the Old Abe and bond it and raise the money to pay for the mine and to pay back to the Eagle Company the money she has in and to carry on the enterprise is a very happy solution of the whole difficulty and upon its success depends the future success of the Eagle Company. And I want if possible to keep the Eagle

Company protected from successful attacks. I have written to Mr. Sturgeon two letters upon the subject since he went away and I send you herein a copy of the last letter written him. When you have an opportunity I think you had better take up the matter with him and discuss it. He can and must appreciate the situation. I wish to say that, in view of the fact that some dissatisfaction seems to be growing up among the stockholders of the Eagle Company, it is highly important that the Board of Directors of the Eagle Company keep themselves, if possible, thoroughly protected against any 273 attempted attack. You are and have been treading upon very dangerous ground and it is important that you be protected in every way possible. I do not wish you or Mr. Sturgeon to consider that I am anything but an alarmist in these matters, but I know something of the responsibility of the officers and directors of a Company to the stockholders and of the legal rights and remedies of stockholders as against a company and its board and I write you what I do to put you on safe ground, if I can. I think this new plan of Sturgeon's is the way out of the difficulty and the only way to do is to do it in such a way as to give the Eagle Company and its Board of Directors all the legal protection possible. If this matter can be carried through as now started by Mr. Sturgeon I think we are on a safe financial basis and we do not want any trouble from any dissatisfied stockholders. You and Mr. Sturgeon are the only two officers of the Company to whom I have spoken or written upon this subject and I do not think it necessary to speak to the others, although I would do so if I had an opportunity but I have felt it important to write to you and him in relation to it. You have a vast number of stockholders scattered all over the country, every one of which has an interest in the property, money contracts and options held by the Company. And the Board of Directors are simply agents representing the stockholders. Mr. Sturgeon assured me that there would be no difficulty in securing the ratification of the action of the board by the stockholders, and I write you this to impress upon you what I conceive the importance of doing so.

Yours truly,

Crane Brothers, Dry Goods, Clothing, etc.

GARRETTSVILLE, OHIO, May 11th, 1903.

MY DEAR HAMILTON: I received your esteemed favor of sometime ago in re, the holding of a stockholder's meeting to authorize the sale of the Old Abe Mine. We had considered that matter and thought best not to delay the sale to go through with that form, but would later on have the stockholders ratify the sale which we feel sure they will do so. We have consulted most of the heavy owners and they are all pleased with the arrangement. I think myself it will put us in much better shape as we will not be able to clear the Hopeful of the remaining debt and put a moderate mill on it, thus making a start in the right direction.

I would like to have you write to Prof. E. B. Wilson, 620 Cornell Bldg., Scranton, Pa., answering the following questions: He asks you to state in regard to the U. S. Deputy Surveys? Has assessment work been done? Are the titles vested in the Eagle M. & I. Co., and whether the titles are of record in the records of Lincoln County?

He also desires your opinion as to Charter and By-laws. If you will say to him that you prepared the charter, or the application for same, and the resolutions to be adopted at the first meeting and the by-laws, I believe that will satisfy him. In regard to incumbrance on the Hopeful, you can mention that if you wish, which I believe is now \$13,000.00, but will be paid from the proceeds of the "Old Abe." If you will write him at once you will confer a great favor.

With kind regards, I remain

Very truly yours,

J. S. TILDEN.

275

"EXHIBIT M." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, *May 14th, 1903.*

Mr. J. S. Tilden, Garrettsville, Ohio.

DEAR TILDEN: Yours of the 11th received in which you asked me to answer certain questions of Professor Wilson of Scranton, Pennsylvania. From the nature of your letter I am a little in doubt as to some of the questions which he desires answered. A portion of it, of course, I can answer off-hand and at once, but some of it, of course, I cannot. I have therefore deemed it best to write him and ask him to give me fully questions covering the points which he desires answered and I will reply to him at once more fully than I could from the information obtained from your letter. I note what you say as to the "Hopeful." Of course if he asks for a correct statement as to the title of the property, and whether the titles are in the company or not, if I answer his question at all I have to state to him the exact facts. And you are certainly in error in assuming that there is only thirteen thousand (13000) due on the "Hopeful," as I have stated to you repeatedly before, there is thirteen thousand (13000) dollars due to the Johnson heirs; there is fifteen hundred (1500) dollars due upon the suit pending upon the property brought long before your company was organized, which Mr. Rice assured me would be settled; there is also the ten thousand (10,000) due to myself, making in all, in round numbers, twenty four thousand five hundred (24500) dollars which is necessary to be paid in order to

276 straighten up the "Hopeful" title and to put it in the company. The Johnson matter of course can be easily explained as it is only the heirs and we are now paying that through the process of court to straighten up the title. As the matter now stands, as you know, the company have only a deed to one-sixth interest in the Hopeful Mine. They have a tax deed of course for the non-payment of taxes, but so far as the title is concerned this does not give them any title. I regret very much to have to go into any detailed

statements to Mr. Wilson of the condition of the Hopeful title as I am afraid of its effect upon him and his people. If this matter could be adjusted at once in some way, out of the Old Abe money or from some other source, so that the suit for the fifteen hundred (1500) dollars could be dismissed and my half of the property deeded to the Company and the money in hand for the other thirteen thousand (\$13,000) why it would be easily explained. Of course these people who are investing or who are proposing to invest a large amount of money as the people of Mr. Wilson are, they necessarily want to know, and have a right to know the condition of the titles to the property, how much of it you own and how much of it is paid for. These are pertinent and proper questions and when they are asked we cannot evade them and it would be impolitic and improper not to give them the exact facts because they will find them out from other sources if we do not tell them. I have long urged upon Mr. Rice the importance of closing up this "Hopeful" title for the purpose of being prepared to meet satisfactorily just such questions as Mr. Wilson and others propound. The payment for this property has been and is more important to the Company than the payment for any other as it forms largely the basis of your whole operations and to have to state that the Company do not own but one-sixth of this mine can be but discouraging to proposed purchasers of stock.

277 I will try to answer Mr. Wilson's letter in the very best way that I can so as to keep within the absolute facts and the truth.

Yours truly,

"EXHIBIT M." W. H. W.

Crane Brothers, Dry Good, Clothing, etc.

GARRETTSVILLE, OHIO, May 18th, 1903.

Hon. H. B. Hamilton, El Paso, Texas.

MY DEAR HAMILTON: I am in receipt of your esteemed favor of the 14th and carefully noted contents. I have been informed that the balance due on the "Hopeful" after paying off Mr. Parsons, was \$13,000.00; \$10,000.00 to you and a balance of \$3,000.00 to the Johns heirs, but presume you know more about it than I do. At any rate it is the intention of the company to clear up the Hopeful title out of the proceeds of the "Old Abe" sale and you can safely say this to Mr. Wilson.

We are very anxious to interest him as he represents considerable capital and will do us a world of good if we can get him started right but at the same time we must give him all the facts he asks for.

Very truly yours,

J. S. TILDEN

"EXHIBIT M." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, *May 21, 1903.*

H. S. Tilden, Garrettsville, Ohio.

MY DEAR SIR: Yours received. I am certainly correct as 278 to the condition of the Hopeful title. Whatever is mentioned to Prof. Wilson with reference to the title of the Hopeful I will assure him as you say that these titles will be straightened up from the Old Abe money. I am anxious to do everything I can to help the matter along and to interest him in the property. I have received from the Clerk a certified list of the property to which the company have title, and I think with that coupled with the statement I make I will try to put it to him in good shape. Certain as good as can be done consistent with the facts.

I had hoped to hear from Sturgeon before this but I presume he is out in Chicago. I wrote him substantially what I wrote to you. Also I wrote the same thing to Rice so that they both understand it.

Yours truly,

"EXHIBIT M." W. H. W.

Crane Brothers, Dry Goods, Clothing, etc.

GARRETTSVILLE, OHIO, *May 26th, 1903.*

Hon. H. B. Hamilton, El Paso, Texas.

MY DEAR JUDGE: Replying to your late favor; I hope in writing to Mr. Wilson you will not need to go into detail too much in stating the affairs of the Hopeful, as the indebtedness will be paid, as I understand it, from the proceeds of the sale of the Old Abe and will probably be paid shortly. We believe Prof. Wilson will be able to do us a great deal of good provided he can be satisfied as to titles, as he was well pleased with the property.

Very truly yours.

J. S. TILDEN.

279

"EXHIBIT M." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, *June 19th, 1903.*

Mr. J. S. Tilden, Garrettsville, Ohio.

DEAR TILDEN: In a letter which I have just received from the president of the Old Abe Mine, he informed me that the company have not yet taken up the deed, and he regards the matter as a failure, and that they will get their deeds back from Massachusetts. Whether this is so or not, I do not know. You are perhaps better advised about the matter than I am. Assuming that it is correct,

I presume this means that the company has fallen down on the Old Abe, and that this part of the transaction will fall through, which will result, of course, in the Old Abe going back to the owners, with a loss to the company of all the money which they have put into it. This is unfortunate, but it is really to be expected from a standpoint and from my view of the Old Abe proposition.

I would like to know now what the policy of the company will be. Will it attempt to go on with the remainder of the Eagle property, and construct a plant on the Hopeful? This it would seem, the advisable thing to do, and a thing which will pull them out, if it can be accomplished. I always felt and still feel that a mill on the Hopeful property would save the company from a wreck. The only question is, whether they are in a condition to raise the money to accomplish it, or whether they intend to give the whole matter up, and treat it as a failure. This certainly would be a lamentable thing for the stockholders and the board of directors and everybody connected with it.

280 I feel that I cannot remain with the company longer than the first of July, unless I can get my money. Of course, if the company does not intend to proceed further, I can get my money, or at least a portion of it, out of the Hopeful mine. As you know, I own one-half ($\frac{1}{2}$) of it which has never been deeded to the company, and which I can sell and realize my money, or at least a portion of it. This I, of course, will do unless the company desires to go on with this enterprise and in that event, I wish of course, a settlement out of the company.

I wish you would let me know at once what the intention of the company is. I get little or no satisfaction either out of Rice or Sturgeon.

Yours truly,

“EXHIBIT M.” W. H. W.

First National Bank.

GARRETTSVILLE, OHIO, June 23rd, 1903.

Judge H. B. Hamilton, El Paso, Texas.

MY DEAR HAMILTON: Replying to your favor of the 19th. There has been an unavoidable delay in the sale of the Old Abe mine. After Sturgeon had arranged with the Hampden Trust Company to act as trustee for bondholders, and after the mortgage had been made out of it, the directors of the trust company came in and refused to ratify the action of its President and Treasurer and turned the proposition down. Sturgeon then arranged with the Knickerbocker Trust Co., to act as trustee, which necessitated a new mortgage and bonds. This matter has taken up considerable time, but the sale of the Old Abe mine is in no way off, on the contrary I am assured that it is sure, but a little time is what we need to carry the deal through.

281 We are now installing a small plant of machinery on the “Hopeful property,” and I agree with you that the “Hopeful”

is where our hopes lie, and we will add to this small mill as we are able to do, until we have a large one. I sincerely hope that nothing will take place to annoy us just at this time as we are on the very eve, I believe, of getting over our troubles and I have never thought of anything else than success in handling this property.

I met by appointment Mr. E. S. Pratt of Scranton, Pa., who is the man that co-operates with Mr. Wilson in the sale of our stock. I explained to him all about our titles and many other things about which he asked me. He stated when leaving me that he was perfectly satisfied with everything and that they (he and Wilson) could easily place 500,000 shares in Scranton within two months. He further stated that without any solicitation whatever there was \$30,000 already to go into the enterprise as soon as Mr. Wilson would say the word, and that Mr. Wilson would say the word when he returned which would be the last of this week. Besides this, we have hopes in other directions and we feel that we are now very close to some large sales which will put us out of all trouble and enable us to take care of our obligations to you and everybody else.

I sincerely hope you will have patience a little longer before withdrawing the deeds as we can take care of them a little later. Now judge, do what you can to get more time on the Old Abe, and I feel we will come out all right. We are doing the best we can, but the delay in taking up the Old Abe deeds was unavoidable on our part.

I will write Sturgeon today and you will without doubt hear from him.

Very Truly Yours,

J. S. TILDEN.

282 H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, June 27th, 1903.

Mr. J. S. Tilden, Garrettsville, Ohio.

DEAR SIR: Yours of the 23d received. I am glad to know that your company expect to go on, take up the Hopeful property and construct a plant thereon. You state in your letter that you are arranging, or rather that you are placing a small plant on the Hopeful. I do not know whether *that* this means that you are doing so now, or whether you contemplate doing so. Mr. Rice and Mr. Sturgeon told me in March when I met them at the mines that they thought they would put on a small plant of twenty-five tons capacity, adopting some new machinery which was being tried as an experiment. This I regarded as a mistake, for the reason that the company are not in a position to experiment with any new undertaking. If you put on a small mill simply to test some new undertaking, and it proves a failure, those who own the mill and have put it up, will condemn the mine broadcast. You had better wait until you get more money and put up a mill about which there will be no question and no failure can result. This is my view of the matter, but, of course, you and your company can do as you like about it.

I stated to Mr. Rice and Mr. Sturgeon that they should not put up any plant on the Hopeful until it was paid for, and the title secured to the company. It would be an unsafe undertaking for the

company to go to the expense of putting a plant on it with the title in its present condition, as the title is not in the company and it might be more difficult to acquire a title in the event a plant should be 283 constructed or begun before the title is acquired. Certainly the only wise course to pursue is to acquire the title first. I throw out these suggestions for your consideration.

As far as I am personally concerned, if it be their plan to put up this small mill which was originally talked of, I prefer to have my part of the title taken up before they do this. I am, and have been, fully satisfied *the* the Hopeful property will pull your company out of its difficulties, if you can get a good mill on it.

I sincerely hope the Scranton people will take up the stock which they propose to take. I had fully made up my mind to leave the service of the company on the first of July, but I have no disposition to desert you if I can be of service to you. I would like to have something done as soon as possible in the way of getting my money or a portion of it, so I hope you will bear this in mind in getting the money from the Scranton people.

Really I think it is not unfortunate if you fail in the Old Abe enterprise, except in the loss of the seventy thousand dollars which you have put into it. Aside from this, I think the most fortunate thing for the Eagle Company and everybody connected with it, is to abandon and give up the Old Abe. I do not believe you can ever make it a paying enterprise with the money you can get, as your capital is too limited.

Relying upon you and Sturgeon to straighten the matters out, take care of the Hopeful title, and straighten up the matter with me. I am disposed to stay with you and help you.

Have just received notice of two suits, one against the Eagle and one Against the American. I have advised Mr. Sturgeon about these suits, and asked him to send me some money next week, as I will have to go up to the mines to look after the suits. There is quite a lot of prospective litigation ahead of us, and 284 we have got to be prepared to meet it, and it is likely to require considerable of my time.

Hope you will keep me advised of what is going on. I am disposed to stay with you a while longer and see what the outcome is.

Yours truly,

H. B. H.

"EXHIBIT N." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, July 26th, 1901.

Mr. Milton George, Chicago, Illinois.

MY DEAR SIR: I have prepared and send you herein an outline or form for your preliminary meeting which is to be held in Chicago. I have not gone specially into details as to these various matters which it will be necessary for you to pass at the first regular official meeting of your board in Chicago. The resolution with

reference to setting apart of four million (\$4,000,000.00) dollars of stock to be used in the purchase of the property and the establishment of the plant and the authorization of the sale of two million (\$2,000,000.00) dollars of it with which to raise funds for the immediate use in the acquisition of the property and the establishment of the plant, I have drawn a mere outline form, after consulting with Mr. Rice. Of course you can modify this in such manner as you think it advisable. I think it necessary for you to pass some resolutions setting apart this stock and authorizing a sale of it to raise funds for the operation of your business. As to

285 the amount to be sold and at what price it is to be sold, that is merely an outline of the kind of resolution which I think you ought to adopt. The resolution, also, with reference to the appointment of Mr. Rice as general manager with authority to transact business for you, and to acquire the title to this property, is a resolution which you should also adopt. You must have some one on the ground fully authorized to represent the company, to acquire the property, and to make its contracts, transact its business and handle its money, and that is the purpose of this resolution. Of course you can modify it in any way you see fit. You will see I have drawn a resolution to be adopted by the board appointing Mr. Rice as the general agent of your company, and designated him as the person upon whom service of process may be made under the laws of the Territory of New Mexico. This resolution is required by the statute of New Mexico. If you adopt this resolution, you will see that it is detached from the others; you will sign it in form as I have certified it, or rather have the President and Secretary sign it and attach the seal of the company to it and send it back to Mr. Rice, so that a copy of it may be filed here, as required by the statute. There are probably many other resolutions which I might prepare if I knew exactly what method of your business would be, and which I could prepare if present at your meeting. Of course not being there, I can only give you this rough outline of those resolutions which you ought to adopt. Of course any other resolutions or any other matters you wish to transact at the meeting is perfectly proper for you to attend to. You can communicate with me at any time you desire.

Yours truly,

— — —

"Enclosures."

286

"EXHIBIT N." W. H. W.

Eagle Mining and Improvement Company of New Mexico,
314 Tacoma Building.

CHICAGO, ILL., 12-13-'02

Hon. H. B. Hamilton, El Paso, Texas.

DEAR MR. HAMILTON: Your favor of Dec. 6th duly received in my absence in the country. I made a visit to my old home county, this state, to revive interest in the Eagle Company. I met with fair

success. The difficulty of raising funds was brought about by reasons which I explained to you and others, such as too much extravagance in using other peoples money, and then as you know I was voted off the board by means which were not quite fair. Not only that, but my name was eliminated from literature which was put out by the Secretary to all my customers and agents, which destroyed faith in the enterprise. By the use of time and money I laid the foundations of a good business, and as you know we were succeeding well under the many adverse circumstances which we had to meet from time to time, which arose from bad management and interference by Tom, Dick & Harry. As results some stock was thrown back on the market, which gave brokers a chance to advertise same at cut-rate price. This caused us a large amount of trade loss among customers and agents. We had, during the last two months, three or four large parties from Indiana and Illinois visit Parsons to inspect properties, but none of them have taken any stock after having come in contact with the business management. We took in \$3,400.00 on Thursday, though considerable of

287 that went to the American. We have a good deal of money in prospect, but business is slow enough yet. At least one-fourth of the second payment on the "Old Abe" was made and the remainder provided for by extension of time. Eugene Parsons is also paid in full but as you say there are plenty of other needs which are pressing, and now the prospects are brightening, and a more satisfactory state of affairs in the office prevail, the indications are that we shall be able to meet all obligations in the near future. We sent a ton or two of ore to the Colorado Iron Works Co. of Denver, to be treated by modern methods, which is necessary to enable us to install equipment best suited for their reduction. The test made proved an average value of the ores to be \$7.90 per ton, with the possibility of a still larger saving. The Colorado Company are very enthusiastic over results, and I believe are offering to install a large amount of machinery on terms of stock payment or a percentage of the output of gold to liquidate cost of the plant. If a deal of this kind can be carried it will solve some of the difficulties in the way of immediate equipment of property and in meeting all other obligations. I hope to see you in the near future, and wish you success. I am

Yours very truly,

MILTON GEORGE.

"EXHIBIT N." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, December 16th, 1902.

Mr. Milton George, Room 314 Tacoma Building, Chicago, Ill.

DEAR MR. GEORGE: Your letter received. I am glad things are assuming a better shape in reference to the sale of stock 288 and that a better feeling prevails in the office. I am not surprised at the delays you have encountered in the sale of

stock; you and I perhaps know as well or better than anyone else the causes of these delays and the influence which seem to deter men from taking hold of the stock. I oversaw this some time ago and am not surprised at it. I hope, however, that now matters are in such shape that you may be able to realize sufficient money from the sale of stock to meet the financial demands of the company. If the company can arrange with the Colorado Iron Works to construct the plant on the basis which I understand is proposed, this will be a great help to the company and will result in saving the necessity of cash by the sale of stock. I am glad they have settled with old man Parsons. I want the company to close out the remainder of the Hopeful Mine and pay the money and take up these interests. These people who are interested in this matter and who have the claim upon the mine are beginning to get anxious and dissatisfied and demand a settlement of the matter and want their money out of the Hopeful property. I also want mine. I desire to have the matter closed up at the earliest possible date. I have called the attention of Mr. Tilden to this, and will also call the attention of Mr. Rice and the board to it. Where is Mr. Richardson now? Do you hear anything from the South Bend people? I have had one or two letters from bankers in Illinois and Ohio asking about the Hopeful property, at to title, etc. The Mr. Dickenson who write the article published in the Interior is an old personal friend of mine. He came to visit me in El Paso while on his trip. I think his statement in the Interior with reference to the title to the property was a little broad, as I told him the condition of the Hopeful title. His article would leave the inference that I told him the titles were clear in the company. This I did

289 not do, but told him the exact facts. Have you taken any

steps with reference to the increase of the board, or do you contemplate doing so? I assume from your letter that you expect to be down soon. Should you come, hope you will come to El Paso to see me. I think you are now all right if you can get the Colorado people to put up the mill on the Hopeful. There is where your success lies. I have always felt, and still feel, that the success of this company depends upon getting a plant on the Hopeful or Parsons property and that it has not much to hope or expect from the Old Abe, at least in the near future. Write me anything you may have.

Yours truly,

“EXHIBIT N.”

Eagle Mining and Improvement Company of New Mexico, 314
Tacoma Building.

CHICAGO, ILL., 12. '20'02.

Hon. H. B. Hamilton, El Paso, Texas.

DEAR HAMILTON: Your favor of the 16th inst., duly received and I am glad to hear from you. What is the sum of money necessary to liquidate the other interests in the Hopeful group of mines,

including your own claim? Please let me know as soon as possible and I will see what can be done. We do not hear much from the Indiana people of late. I am hoping to be able to revive the interest, but am not sure. Mr. E. G. Richards accepted a position in St. Louis with a large manufacturing concern just starting in business. The outlook for the Eagle enterprise seemed so discouraging of late that he could not afford to wait for a position there. Mr. Richards is a rustler, and I believe just the man we need in Parsons, though I suppose if the Colorado Iron Company 290 decides to install machinery that will employ its own superintendent, etc. Mr. J. F. Tilden was here this week and I talked with him in reference to an increase in the board of directors and he promised to take up the subject in a few days, in case Mr. Rice comes up, as expected, during the holidays. I would like to see you soon, but as my time will be fully occupied here for some time to come, I cannot visit Parsons or El Paso at present. Thanking you for your interest, believe me.

Yours very truly,

MILTON GEORGE.

"EXHIBIT N." W. H. W.

H. B. Hamilton, Attorney at Law, Mundy Building.

EL PASO, TEXAS, Jan. 17th, 1903.

Mr. Milton George, Room 314 Tacoma Bldg., Chicago, Ill.

DEAR MR. GEORGE: I would like to know how you are getting along with the sale of stock. I have just written a letter to Mr. Sturgeon who informed me that they have made a contract to put a mill on the American. It is unfortunate for us, I think, that we have not a mill contracted for and begun on the Hopeful. If this was done it would give confidence and certainly aid in the sale of stock. There is great desire for it on the part of the present stockholders and in fact considerable complaint that something in this direction is not done. If the company had the Hopeful matter straightened out and a contract for the mill I think it safe to say they could sell quite a large amount of stock in different 291 directions at once. Let me hear how you are getting along with the stock sale.

Yours truly,

Dict. K.

"EXHIBIT O." W. H. W.

Agreement.

This agreement made and entered into on this 10th day of April, 1893, by and between E. S. Parsons, of the County of Lincoln, Territory of New Mexico, party of the first part, and H. B. Hamilton, County of Socorro, Territory of New Mexico, party of the second

part, Witnesseth: That whereas the party of the first part is the owner of an undivided interest in and to all that certain mine and mining claim known as the Hopeful Mine, which said mine is fully described in the location notice of said claim, duly recorded in Book — Page — of the public records of Lincoln County, which said claim is further described in the records of the Land Office at Las Cruces, New Mexico, as Surveys Nos. 652A and 652B, to which records reference is hereby made for a more full and complete description of the said Hopeful Mine; and whereas the said party of the first part is also the owner of an undivided interest in a certain mill and mill building, located near and used in connection with the said Hopeful Mine, which said mill is located upon and near the Hopeful Mine mill site in connection with the said Hopeful Mine, which said mine and mill are located in the Bonito Mining District in the said County of Lincoln in the said Territory of New Mexico, which said mine and mill are owned by the said party of the first part, and certain other parties who are the legal heirs of one R. C. Parsons, deceased; and whereas, the said party of the first part is having some difficulty in regard to the settlement of his
292 interest in the said mine and mill with his partners to the estate of the said R. C. Parsons, deceased, and desires to retain the said party of the second part to carry out and attend to the said business and to procure for him -is interest in the said mine and mill free from any dispute and litigation, the party of the second part agrees, on his part, to take hold of said business for said party of the first part in conjunction with one R. C. Rogers, an attorney at law of Roswell, New Mexico, and the said party of the second part in conjunction with said R. C. Rogers agrees to bring about and procure and settle all the difficulties effecting the said mine and mill between the said party of the first part and his co-owners therein; and to procure the settlement of the estate of the said R. C. Parsons, deceased, and to render said property from the possession and control of the Probate Judge and sheriff of Lincoln County, and agrees to institute and prosecute all suits and litigation necessary to bring about such settlement and to fix the interest of the said party of the first part in his favor free from litigation and dispute, so that same may be operated or disposed of if desired, provided purchaser can be obtained therefor. The party of the first part covenants and agrees to and with the said party of the second part that for said services he will give, grant and convey to the said party of the second part 15% of all of his entire interest which he has or may have in and to the said mine and mill, hereby giving and granting to said party of the second part 15% of all of the interest of the said party of the first part in and to the said mine and mill of the proceeds arising from the operation, disposition, rental or sale of the said mine and mill above described. And it is understood that the said 15 per cent interest hereby conveyed or
293 given to the said party of the second part shall be and become a lien upon the said interest of said party of the first part in and to said mine and mill.

Witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

E. S. PARSONS. [SEAL.]
H. B. HAMILTON. [SEAL.]

Filed for record this 13th day of January, A. D. 1894, at 5 o'clock p. m.

GEORGE SENA, *Recorder.*

TERRITORY OF NEW MEXICO,
County of Lincoln, ss:

I, D. Perea, Probate Clerk and Ex-officio Recorder in and for the County of Lincoln and territory aforesaid, do hereby certify that the foregoing is a true and correct transcript from the records of my office of an instrument recorded in book C, Records of Contracts and Agreements on pages 403 and 407.

In witness whereof I have hereunto set my hand and affixed my seal this 4th day of December, A. D. 1897.

D. PEREA,
Probate Clerk and Ex-Officio Recorder.
By E. W. HULBERT, *Deputy.*

Testimony Taken Before Referee W. H. Winter December 23, 1905.

Col. G. W. Pritchard, Counsel for Eagle Mining and Improvement Company.

James G. Fitch, Esq., Counsel for Mary R. Hamilton and Others.

294 In the District Court of the Sixth Judicial District of the Territory of New Mexico, within and for the County of Lincoln.

No. 1444.

THE EAGLE MINING & IMPROVEMENT CO.

v.

MARY R. HAMILTON and Others.

No. 1539.

HUMPHREY B. HAMILTON et al.

v.

THE EAGLE MINING & IMPROVEMENT CO.

Now on this 23rd day of December, A. D. 1905, come all the parties in the two above entitled and numbered causes, by their respective attorneys, and agree and stipulate to take their testimony in said causes before W. H. Winter, Esquire one of the referees heretofore appointed in these causes to take testimony, by the Court, who has heretofore taken testimony in said cause, and reported same to the Court.

It is further agreed and stipulated by and between the parties hereto that such testimony to be taken at this time by said parties or either of them may be taken in shorthand by a stenographer and thereafter reduced to typewriting, and that the same may be reported to the Court by the said referee after being so transcribed into typewriting, and may be used as testimony of the witnesses in said causes, or either of them, and that it shall not be necessary for the respective witnesses, or either of them, to sign any such testimony in order that the same may be used in evidence in said causes, or either of them.

It is understood that the said referee shall furnish each of the said attorneys, Col. George W. Prichard and James G. Fitch, Esq., a carbon copy of all said testimony to be introduced before the said referee at this hearing.

Mr. HUMPHREY B. HAMILTON, one of the parties in said causes, witness on behalf of plaintiffs in No. 1444, and on behalf of defendants in No. 1539, being first duly sworn to tell the truth, the 295 whole truth and nothing but the truth, deposes and testifies as follows:

Examination by JAMES G. FITCH, Esq.:

Q. State your name, age, residence and occupation?

A. Humphrey B. Hamilton, Lincoln, New Mexico; attorney at law; thirty years of age.

Q. You are one of the plaintiffs in the case of Humphrey B. Hamilton and others versus The Eagle Mining and Improvement Company, are you not?

A. Yes, sir.

Q. And administrator of the late H. B. Hamilton's estate in New Mexico, and his son?

A. Yes, sir.

Q. Do you know what business your father was attending to during the last two years of his life; that is, from about June, 1901, to June, 1903, the time of his death? What particular business was he attending to principally?

A. Practicing law.

Q. Do you know what most of his time was devoted to during that time?

(Objected to by Col. Prichard).

Q. I am asking you. Do you know?

A. I do not think I do. I was living part of the time at Roswell and part of the time at Lincoln, except on visits that he made. I know that he made two trips out to Roswell during that time and one trip while I was at Lincoln.

Q. Do you know how many trips he made down to Lincoln County during the time you lived in Lincoln?

A. I do not.

Q. Do you know Mr. J. M. Rice?

A. Yes sir.

Q. Have you ever heard any conversation with Mr. J. M. Rice with regard to the services of your father as an attorney for the Eagle Mining and Improvement Company, and with regard to any indebtedness that the company may be owing him, or, rather, his estate?

A. Yes sir.

Q. How many conversations have you had with him?

A. Well, I have had two conversations with him.

Q. When and where was the first conversation?

A. The first conversation was sometime in the latter part of July, 1903, in my office at Lincoln.

Q. Was anybody present besides Mr. Rice at this conversation?

A. Yes, Mr. Whetmore and my father-in-law; and Dr. Dryden came in later on in the conversation.

Q. Will you state as fully as you can what was said in that conversation?

A. I don't know whether I can give the conversation word for word, but Mr. Rice came down to see me relative to a deed which had been made by my father during his life time and had been placed in the First National Bank here, and which Mr. Driscoll and myself had taken out after his death. We got to talking in regard to the indebtedness and I think I spoke to him relative to this deed. In that conversation, a memorandum on the back of this envelope called for Fifteen Thousand Dollars—

Col. PRICHARD: I object to what any memorandum showed.

WITNESS: —and Mr. Rice stated in this conversation that this property had been purchased and that he had given a check for Five Thousand Dollars, or something over Five Thousand Dollars. I don't remember whether he gave the exact amount or not; said his check book would show, and he intimated that on the transaction—

Mr. FITCH: Tell what he said, not intimated.

WITNESS: Well, he said: Well, from what he said I judged this money went to him—

Mr. FITCH: Just strike that out. You know better than 297 to answer the question that way. Go on and tell the substance of that conversation as well as you can.

A. Well, he said this money that had been advanced, went to him and that the balance of it was what was due or went to my father. I asked him in regard to salary for his services, that was along after the latter part of the conversation, and he said he was going to Chicago and that he could not tell anything about that until he went there and examined his books—what was due on salary.

Q. What, if anything; did your *father* say with regard to the balance due your father on this deed that has been placed in escrow?

Col. PRICHARD: I object to this question as leading and suggestive.

A. He stated that there was an agreement, I don't remember whether that was the exact words, between him and my father at

the time the deed was drawn up; that he had furnished this money and that it was between him and my father—the deal was.

Q. Please answer my question: What, if anything, did Mr. Rice say as to the balance that was due from the company to your father on this deed that had been placed in escrow?

A. I think I answered that. He said that something over five thousand dollars had been paid to him, and it was a transaction between him and my father, the balance of this money over and above that went to my father.

Q. Well, go on and state anything more that was said by Mr. Rice or by yourself or Mr. Wetmore in that conversation?

A. I think I asked him when they would be ready to take the matter up, and he said he didn't know; said that if everything went off all right they would clean up all their indebtedness, and I 298 told him the condition of the estate: that the estate was in debt and that they would have to have some money; told him that if they didn't intend to do anything I would like to know it, or something of that sort; that was just before he went out of the door. When he referred to that deed being a trust, I told him we had letters in our possession from the officials of the company in which they virtually admitted that this transaction, that this deed was to be treated as a mortgage.

Q. What reply, if any, did Mr. Rice make?

A. That is when he made the reply, just when he went out the door, that this deed was held as a trust; that is the only time he mentioned trust.

Q. When you said that you had letters from the officials of the company showing that this deed was in effect a mortgage to secure your father, what reply, if any, did Mr. Rice make to that?

A. He said he was the manager of the company and he knew more about that business than anybody else; he didn't know whether letters had been written or not, or words to that effect; he was the man that was running things.

Q. What, if anything, was said about conveying the interest that your father held before this money was paid to him?

Mr. PRICHARD: Objected to as leading.

A. I don't think there was anything said on that; in fact, that, I remember—

Q. What, if anything, was said in regard to this deed having been placed in escrow here at the First National Bank of El Paso?

A. Well, I have stated before in regard to that; that is what I understood he came down there for; that he was not in any shape to take the matter up at that time; I told him in that conversation that the time had long passed for the deed to have been taken up.

299 Q. Well, What did he say with reference to that?

A. Well, I don't think he committed himself much on that at all; about all he said was that he had charge of those things and knew more about it than anybody else did.

Q. Can you state, if anything, what Mr. Rice said in regard to

this deed having been placed in escrow here, as to whether he knew about it or not?

Col. PRICHARD: I object to the question as leading and suggestive.

A. I don't remember whether he said anything about it or not; I brought the conversation up in regard to the deed, and then we got off into the details and I don't know whether he ever said whether he knew about it or not.

Q. Did you have the escrow memorandum or agreement endorsed on the envelope at that time?

A. I don't think I did; don't think I had it; no, I know I didn't.

Q. Did Mr. Wetmore take any part in the conversation?

A. Yes sir.

Q. Now give what he said and what you said.

A. The main conversation along at the last was more between Mr. Rice and Mr. Wetmore; I was sitting at the desk and they were sitting close together; just what Mr. Wetmore said and I said I don't know; wouldn't be able to say.

Q. You say there was a fourth party present at the conversation, Dr. Dryden?

A. He came in; Dr. Dryden I think came down and was there a short time and went over to Dr. Watson's residence.

Q. How long was he present?

A. Only five or ten minutes.

Q. Did he hear any of the conversation?

300 A. Only the latter part about the trust, just before Rice got ready to leave; he may have been in there a little longer than that, but not during the entire conversation; he came in just along towards the last.

Q. When did you have this other conversation with Mr. Rice and where was it?

A. I don't remember just when it was; I think possibly it was in August; when was it I saw you in Santa Fe, Mr. Fitch, in 1904?

Mr. FITCH: Yes, I think so.

A. It was in August, 1904; I met him in August before this suit was filed; I went up to the mine; Mr. Rice was at the mine; we got in the buggy and rode down to his office.

Q. Well, what was said by you and Mr. Rice in that conversation?

A. The only thing said in that conversation was relative to some satisfactory settlement. I think he said Col. Prichard was in the east and that nothing could be done. I went up to try and make arrangements to have a settlement between you and Col. Prichard and Mr. Rice, or get you to have a meeting; he said he was willing, but that he could not give a day when that could be done until he could hear from Col. Prichard, and Col. Prichard was in the east.

Q. Was that all that was said in that conversation?

A. Well, there was a question brought up as to another brother, who was working in Mexico, as to obtaining his title to the property on the settlement; he suggested that he make a deed to his interest

in the property to some one of the other heirs so as not to delay matters in case we had a meeting and settlement.

Q. Settlement of what?

A. Of this indebtedness; the same things involved in this suit.

301 Q. Was that all that was said in this conversation about this matter?

A. Well, I just went up—

Mr. FITCH: Never mind; if that was all don't cumber up the record; that is all.

Col. PRICHARD: We don't want to examine this witness.

Referee WINTER: No examination on behalf of the Eagle Mining & Improvement Company. The plaintiffs in No. 1444 and defendants in No. 1539 here rest.

Referee WINTER: The attorney for the Eagle Mining & Improvement Company here introduced first witness, J. M. RICE, who being first duly sworn to tell the truth, the whole truth and nothing but the truth in the above entitled causes, deposes and testifies as follows:

Direct examination by Col. PRICHARD:

Q. State your full name, Mr. Rice.

A. John M. Rice.

Q. Where are you residing?

A. Parsons, New Mexico.

Q. How long have you been residing in that vicinity?

A. For the last six or seven years.

Q. Do you know anything about a company known as the Eagle Mining & Improvement Company?

A. I do.

Q. How long has that company been in existence?

A. A little over four years.

Q. What connection, if any, have you had with that company?

A. I have been general manager of the company ever since its organization.

Q. Are you general manager now?

A. Not at present, no.

Q. When did that relation cease?

A. The last of October last.

302 Q. Did you know Judge H. B. Hamilton in his lifetime?

A. I did.

Q. Did you know him before the organization of this company?

A. Yes sir.

Q. After the company was organized, did you have any business relations with him?

A. I did.

Q. Well, what relation, if any, did he occupy to the company?

A. Well, he was attorney for the company.

Q. When did that relation begin?

A. At the time of the organization of the company.

Q. How long did it continue?

A. Until his death.

Q. State the circumstances briefly under which he became the attorney for the company?

Mr. FITCH: I object to that as immaterial.

Q. How did the company employ him as attorney?

Mr. FITCH: Objected to as immaterial.

A. Well, he had been connected with the Parsons interest before that; that is the manner in which I became acquainted with him; he was perfectly familiar with all the titles to that property, and it seemed a good thing to have a lawyer take charge of the affairs of the company; he drew up the articles of incorporation and also secured some titles.

Q. Now state whether or not there was any agreement entered into between you and Judge Hamilton as to what he should receive for his services?

A. There was an agreement between Hamilton and myself as to his services.

Q. State what the agreement was?

A. The agreement between Judge Hamilton and myself was that he was to attend to all the legal business of the company; 303 organization, securing titles, securing patents on a number of claims we had unpatented, and attend to all our legal business in connection with any disputed claims that might arise or any law suits that might come up; secure deeds from especially two different heirs of the Parsons estate: he represented to me that he could get the deeds from Agnes Carpenter and C. C. Parsons at a price that would be better than I could get them for if I went to them myself, and the agreement between him and myself was that he was to have for his services for doing legal work the difference between what the property cost and fifteen thousand dollars; I gave him the money to go and get the options; he got the options, and on the first of July following the options being secured I gave him the money to buy the property, and he was to turn over the deeds to the company whenever I requested him to do so; that about covers the point.

Q. Now, how much money did you furnish Rice, or Hamilton, to get these?

A. To pay for these properties?

Q. Yes.

A. The price was Fifty-five Hundred Dollars.

Q. Well, how much did you furnish?

A. I furnished him Fifty-five Hundred Dollars for that business.

Q. You furnished the price?

A. Yes sir.

Q. Now, who were the heirs that you speak of?

A. Well, one was Agnes Carpenter and another C. C. Parsons, of the Parsons estate—heirs of the Parsons estate.

Q. And what interest was it that he was to secure?

A. I think that those two interests represented a one-half interest in the Hopeful Mine.

Q. Was that mine a patented claim?

304 A. It was.

Q. Is that the property that is referred to in this suit?

A. Yes, it is.

Q. Now state what he did, if anything with reference to procuring these titles from these heirs?

A. He secured the titles from Agnes Carpenter and C. C. Parsons for their interests.

Q. Now, you spoke of the amount that you were to pay him, that is, the difference between Fifteen Thousand Dollars and the costs of these interests; was anything said as to anything that was due him from one of the Parsons on a contract with Parsons?

A. There was. E. S. Parsons had a contract with Judge Hamilton to pay him a certain percentage when this Hopeful mine was sold.

MR. FITCH: Wait a minute. I object to that as incompetent and irrelevant, that contract itself being the best evidence and already having been introduced in evidence in this case.

Q. Well, now, go on. You didn't finish your answer. Go on and finish your answer.

A. And under the agreement with Hamilton I assumed that payment due from E. S. Parsons, which was included in the sum total to be paid Hamilton for his services, and accepted by him.

Q. Was that amount understood and agreed on?

A. It was agreed upon as between Hamilton and myself.

Q. What was it?

A. One thousand dollars.

Q. State whether there was an agreement between you and Hamilton that these deeds from Mrs. Carpenter and C. C. Parsons were to be made to Hamilton?

A. There was.

MR. FITCH: Wait a minute. I object to that as leading.

305 Q. Now state what was said, if anything, in connection with that agreement, between you and Hamilton—why the deeds were to be made to Hamilton.

MR. FITCH: I object to that because there is documentary evidence as to the terms by which these deeds were to be made to Hamilton, to show the object for which they were made.

Q. Go on.

A. The deeds were to be made to Hamilton for the purpose of getting the property cheaper than the company could procure it.

Q. What was said by Hamilton or by you on that point is what I want to know?

A. Hamilton said he could get them cheaper than I could get them, and if it was deeded to him direct there would be less trouble in securing the title—in securing the deeds.

Q. Did he give any other reason? State whether or not—Strike

that out. State whether or not he gave any reason why he could get the deeds cheaper than you could?

Mr. FITCH: I object to that as immaterial and irrelevant.

A. The reason was that if they knew the company was buying the property they would want more money for it than he could get it for.

Q. State whether or not there was any agreement between Hamilton and yourself as to whether Hamilton was to make a deed to any one of this property?

Mr. FITCH: I object to that question because there is documentary evidence that has been introduced, namely, declarations of trust, showing on just what terms the property was to be conveyed by Judge Hamilton.

A. I don't just remember the question.

Q. Read the question. Stenographer reads the question:
303 State whether or not there was any agreement between Hamilton and yourself as to whether Hamilton was to make a deed to anyone of this property?

A. The agreement between Hamilton and myself was that he was to deed this property to the Eagle Mining and Improvement Company at any time that I might request it.

Mr. FITCH: I move to strike out that answer for the same reason, on the same ground as stated on the objection to the question.

Q. What was to be done, if anything, on your part or on the part of the company, before Hamilton should make his deed or deeds to the company for this interest?

Mr. FITCH: I interpose the same objection on the same grounds.

A. There was nothing to be done by the company.

Q. Well, was there anything to be done by you?

A. There was nothing to be done by the company or me.

Mr. FITCH: Same objection.

Q. Did anybody have anything to do with making this contract with Hamilton except yourself?

A. Nobody except myself.

Mr. FITCH: I object to that question as immaterial.

Q. Were you manager of the company at the time that you made this contract?

A. I was.

Mr. FITCH: I object to that—no, I withdraw the objection.

Q. What suits did Judge Hamilton appear in which the company was interested, in his lifetime?

Mr. FITCH: I object to that question. The records are the best evidence—the court records are the best evidence.

A. There were no suits.

307 Q. Now state whether or not you paid Judge Hamilton anything under that contract.

A. I did.

Q. What did you pay him? How much?

A. About seventy-six hundred dollars.

Q. That embraced fifty-five hundred dollars for the titles to the Parsons lands?

A. It did.

Q. Look at these papers that I hand you and state if you have ever seen them before.

A. Yes, I have seen all of them.

Q. Whose signature is that attached to those papers?

A. The signature to the checks are mine.

Q. What were these checks for?

A. Well, they were checks payable to Judge Hamilton on account.

Q. What account?

A. On account of the contract with him for the benefit of the company.

Q. State whether or not that was the contract referred to.

A. It was the contract I referred to; the only contract I had with him.

Q. Have you been in possession of those checks since they were issued by you?

A. After they were returned by the bank, I have been in possession of them.

Q. To whom were they returned by the bank?

A. They were returned to me by the bank after being paid.

Q. Who is H. B. Hamilton, to whom these checks were issued?

A. H. B. Hamilton was the gentleman with whom I had the contract to do certain legal work for the Eagle Mining & Improvement Company; the man I had the contract with.

308 Col. PRICHARD: We offer the checks in evidence and ask that they be marked exhibits.

Referee WINTER: The checks here introduced on behalf of the Eagle Mining & Improvement Company are designated as "Exhibit A" dated February 18, 1902, for one hundred and fifty dollars; "Exhibit B" dated May 17, 1902, for two hundred dollars; "Exhibit C" dated June 30, 1902, for fifty-five hundred dollars; "Exhibit D" dated July 29, 1902, for one hundred dollars; and "Exhibit E" dated September 25, 1903, for fifty dollars which are here offered in evidence on behalf of the Eagle Mining & Improvement Company in said causes.

Q. State whether you have made any other payments, besides those you have named, on the contract.

A. There was one small payment made in White Oaks, memorandum of which I have not with me; I think it was fifty dollars.

Mr. FITCH: I object to that and move to strike it out—the answer as to what the witness thinks.

Q. Well, go on now, and state what other payments were made, if any.

A. All these other payments were made that—

Q. State what payments were made.

A. On February 18th, paid on account one hundred and fifty dollars.

Q. Now, is that embraced in the checks you have put in? I'm asking about other payments. We have the checks in.

A. The other payments. There was one payment of one hundred dollars on March 3, in currency.

Mr. FITCH: I object to the witness examining memorandum as to other payments unless it is shown that the memorandum was made by him at the time. Just correct that: I object to the witness testifying from the memorandum he has in his hands unless it is shown that the memorandum was made by the witness, or under his direction, at the time the payments were alleged to have been made.

Q. Now go on with your answer.

Mr. FITCH: I want the record to show, Mr. Winter, that the witness is testifying with a memorandum before him there, a paper, apparently testifying from that. I want the record to show that the witness appears to be examining a memorandum from which he is testifying.

Mr. PRICHARD: We have no objection to the record showing that. He has the right to examine a memorandum if he wants to.

Q. Go on now. Where was that paid and under what circumstances?

A. That was paid him in Chicago, and on the same date I delivered to him two New York drafts for five hundred dollars each for the purpose of going to Kansas City and to Sumner, Iowa, to secure options on the interests of C. C. Parsons and Agnes Carpenter of their interest in the Hopeful Mine.

Q. Who delivered those drafts?

A. I did.

Q. Was anything else paid to Judge Hamilton?

A. There was a further payment of five hundred dollars made on October 2, 1902, at the Chicago office.

Q. How do you know it was made?

A. From the books of the Chicago office.

Mr. FITCH: The same objection to this answer as the other, and move to strike it out.

Q. I will just ask you if you were present when the payment was made?

A. I was not; but—

Q. Very well; you need not say anything about that. Now, are there any other items of payment that you have any recollection of to Judge Hamilton on this contract?

310 A. You mean aside from the checks offered in evidence?

Q. Yes, aside from what you have already testified to.

A. Well, those checks—

Q. Just let the checks alone.

A. All right. No other payments.

Q. Now state the extent of the legal services rendered by Judge Hamilton under this contract.

Mr. FITCH: Objected to unless the witness—because it is not shown that the witness knows the extent of the legal services rendered by Judge Hamilton.

Q. Go ahead and answer.

A. He drew up the articles of incorporation of the Eagle Mining and Improvement Company; made three trips to Chicago in connection with the business of the company, and two trips to Lincoln in connection with the business of the company, and one trip to White Oaks; secured the title of the one half interest in the Hopeful Mine from Agnes Carpenter and C. C. Parsons; drew the deeds to three or four groups of mining claims on the Bonita. This is about all of his services that I can recall.

Q. What, if anything, did he do in the procuring of patents from the government for these claims that you have spoken of?

A. He didn't do anything, we were not prepared to go into that question up to the time of his death.

Q. How long did you say he acted as attorney for the company?

A. From the organization of the company until his death.

Q. Well, now, how long?

A. About two years.

Q. Yes, about two years. State whether or not after his 311 death you or the company employed another attorney as to the company's business?

Mr. FITCH: I object *that* that as incompetent, irrelevant and immaterial.

A. About a month after his death I employed another attorney.

Q. What was this attorney employed for?

A. To take up the legal business in connection with the Eagle Mining and Improvement Company's affairs.

Mr. FITCH: The same objection to that question.

Q. Will you state whether that business that the second attorney was employed for was or was not the business that Judge Hamilton was to look after as an attorney under your contract with him?

Mr. FITCH: Wait a minute. Objected to as leading, incompetent, irrelevant and immaterial.

Q. What is your answer?

A. What was the question?

Q. Read the question. Stenographer reads question: Will you state whether that business that the second attorney was employed for was or was not the business that Judge Hamilton was to look after as an attorney under your contract with him?

A. That business that the second attorney was hired for was to complete the work that Judge Hamilton left undone at the time of his death, in connection with the business of the company, for which he was hired by me.

Mr. FITCH: Move to strike out the answer on the same grounds stated in the objection.

Q. Mr. Rice, do you remember whether or not the company received any tax deeds to the Hopeful Mine and Millsite, the property that is referred to in this suit?

Mr. FITCH: I object to that as incompetent, immaterial and irrelevant.

A. We did receive tax deeds.

312 Q. Where are those deeds now?

A. They are there. I handed them to you.

Q. How many of them are there?

A. There are three, I think, one covering the entire property and one covering one sixth and one covering five sixths—two different years' sale of taxes.

Q. What did those deeds cost the company, if anything?

Mr. FITCH: I object to that as incompetent, immaterial and irrelevant.

A. They cost the company the amount that is stated in the deeds there. I cannot recall the exact figures.

Q. Yes. The figures in the deeds represent the correct amount that was paid?

A. Correct amount that was paid for them, yes sir.

Mr. PRICHARD: We now offer the deeds referred to; certified copies of the deeds referred to.

Witness RICE: Those are the original deeds.

Mr. PRICHARD: Yes, the original deeds, and ask that they be marked as exhibits.

Referee WINTER: The attorney for the Eagle Mining & Improvement Company here offers in evidence tax deed dated April 20, 1903, and marked "Exhibit F."

Mr. FITCH: To the introduction of which I object because the said deed is incompetent, immaterial and irrelevant.

Referee WINTER: Also tax deed dated April 18, 1903, marked "Exhibit G."

Mr. FITCH: To which I interpose the same objection.

Referee WINTER: Also tax deed dated April 20, 1903, marked "Exhibit H."

313 Mr. FITCH: To which I interpose the same objection.

Q. Mr. Rice, state the circumstances under which you received these deeds.

Mr. FITCH: Objected to as immaterial, irrelevant.

A. Judge Hamilton accompanied me to Lincoln at the time that we went down to look over the tax matters, and he advised me to have the tax-sale certificates assigned to the Eagle Mining & Improvement Company, saying that after the expiration of the time for redemption expired that it would be necessary to get a deed from the county treasurer to the company, which would give us then an absolute title to the property, there having been three or four tax sales made previous to our purchasing the property. He went down with me and had this assignment made, and during the next year, the year following this assignment, I sent the assignments over and

had the tax deeds made to the company, pursuant to Judge Hamilton's advice.

Q. Did the—Yes—Did the company have any interest in this property at the time it was sold for taxes?

A. No, they did not.

Mr. FITCH: Objected to as immaterial and irrelevant.

Q. What did Judge Hamilton do in reference to assigning the tax certificates of which you speak, if anything, to the company?

Mr. FITCH: Objected to as immaterial and irrelevant.

A. He made out the form of the assignment for the county treasurer to assign to the company.

Q. Referring to Exhibits A and B, the deed and escrow agreement that has been filed in this case by the attorney for the Hamilton heirs, state what you know, if anything, about those papers 314 having been deposited in the bank—What bank was that—the First National Bank?

Referee WINTER: That is my recollection.

Q. In the First National Bank of El Paso?

A. I didn't know that these papers were deposited in the First National Bank until a very short time previous to Hamilton's death. There was no understanding or agreement between Judge Hamilton and myself that they should be placed in escrow; they were not placed in escrow with my consent or knowledge.

Q. Had they, or either of them, been shown to you by Judge Hamilton before he deposited them in the Bank?

A. No sir.

Q. Did he say that he was going to deposit this deed in escrow with an agreement, before they were deposited in the Bank?

Mr. FITCH: Objected to as leading and immaterial.

A. He did not.

Q. How long before the death of Judge Hamilton did you hear about these papers being deposited in the Bank?

Mr. FITCH: Objected to as immaterial, irrelevant, incompetent.

A. It may have been a month. It may have been a few days more than that; not much more.

Q. State whether or not Judge Hamilton ever showed you any letters that he had written to R. C. Sturgeon and—what is Mr. Tilden's name?

Mr. STURGEON: J. S. Tilden.

Q. —and to J. S. Tilden in reference to his services, or charges for services rendered the company?

Mr. FITCH: Objected to as immaterial, irrelevant, incompetent.

A. Judge Hamilton did not show me any letters he had ever written to R. C. Sturgeon or J. S. Tilden with reference to 315 any matters; the matter you speak of or any other matter.

Q. Had any conversation ever occurred between you and Judge Hamilton in relation to any such letters?

A. No.

Mr. FITCH: Objected to as immaterial, irrelevant and incompetent—the question.

Q. Do you know a man by the name of Parker—James H. Parker—who has testified in this case?

A. Yes.

Q. Were you present when he testified?

A. I was.

Q. Did you hear his statement to the effect that Hamilton was to surrender the title to the Hopeful Mine upon the payment of certain sums, or the fulfillment of a certain agreement?

A. I don't remember that he testified to that effect, I was here during his testimony; I don't remember it.

Q. What have you to say as to making any statement of that kind to Mr. Parker?

A. As to my making a statement of that kind, or Judge Hamilton?

Q. No, your making such a statement to Parker. Any statement to the effect that Hamilton was to surrender to the company his deed or deeds when the company paid him a certain amount of money, or fulfilled other agreements?

A. I didn't make any such statement to Mr. Parker. If I made any statement at all it was that Judge Hamilton was to turn the deeds over to the company upon my request, without any stipulation as to money being paid to Judge Hamilton in any special amount.

Mr. FITCH: Move to strike out that part of the answer of the witness from and after the words: "If I made any statement to Mr. Parker."

316 Q. State whether or not there was any such agreement between you and Hamilton?

Mr. FITCH: I object to that as incompetent, written evidence having been produced as to the agreement.

A. There was no such agreement.

Q. State whether or not this sum of money that you have mentioned—the difference between fifteen thousand dollars and the purchase price of these interests from Carpenter and C. C. Parsons—was to pay for the services that you have mentioned, to be rendered by Judge Hamilton?

Mr. FITCH: I object to that as leading and suggestive.

A. That amount of money, the difference, was to pay Judge Hamilton for his services to be rendered, as I have stated previously.

Q. Do you remember the conversation referred to by H. B. Hamilton, Jr., in his testimony as having taken place at Lincoln?

A. I remember calling on him at Lincoln and having a conversation with him.

Q. State what that conversation was?

A. As I told him I had called there to arrange with him in settlement or a basis of settlement of his father's account, and also wanted an arrangement made by which the property could be transferred to the company under my agreement with Hamilton. He claimed there was pay for services due his father outside of the con-

tract that I had with his father, and our interview came to a close very suddenly.

Q. Well, was anything said to him in that conversation as to what the agreement with his father was?

A. I told him what the agreement with his father was.

Q. What did you tell him?

A. I told —— he was to receive for doing all the legal 317 work of this company, as I have stated previously, the sum between—well, which would really be ninety-five hundred dollars for all the services he was to render the company, and the services had not all been rendered, owing to his death.

Q. What was said, if anything, as to whether he had been paid anything on that ninety-five hundred dollars?

A. I told him that there had been some payments made, the amount of the payments I could not tell until I went to Chicago and got the amounts that had been paid there.

Q. State whether or not you made any examination to see what had been paid after that conversation?

A. I did when I went to Chicago.

Mr. FITCH: I object to that as immaterial and irrelevant.

WITNESS: I found out what had been paid by the Chicago office, and the memorandum here shows the amount.

Q. Are you familiar with the signature of H. B. Hamilton, deceased?

A. I am quite familiar with it.

Q. Look at this letter that I hand you and state whose signature that is?

A. It is H. B. Hamilton's signature.

Q. State whether or not you received that letter?

A. Yes, I received that letter.

Q. How did you receive it?

A. By mail.

Q. By mail?

A. By mail.

Q. Look at another letter which I hand you and state whose signature that is?

A. It is H. B. Hamilton's signature.

Q. State whether or not you received that letter?

318 A. Yes, I received that letter.

Q. By mail?

A. By mail.

Col. PRICHARD: We now offer the letters referred to in evidence.

Referee WINTER: The two letters testified to by the witness, J. M. Rice, are offered in evidence in behalf of the Eagle Mining and Improvement Company, and are identified by the referee and marked "Exhibit I" dated April 14, 1903, and the other dated March 14, 1901, and marked "Exhibit J."

Q. State, Mr. Rice, what authority you had as manager of that company to employ Judge Hamilton as its attorney?

Mr. FITCH: I object to that as not the proper way of showing the authority, no authority being vested in law to a manager of a company to employ an attorney.

Q. Answer.

A. I had authority to employ all the help and had charge of the general business of the company in New Mexico, and was the only one authorized to do that business for the company.

Mr. FITCH: Move to strike out the answer for the reason that it is not responsive to the question.

Q. I ask you with reference to your authority to employ an attorney for the company. What have you to say as to that?

A. My authority to employ an attorney was just the same as my authority to employ anybody else.

Mr. FITCH: I object to that because the answer is a mere conclusion of the witness, and move to strike it out.

Q. State whether or not the company recognized Judge Hamilton as an attorney of the company after you employed him?

A. They did.

319 Col. PRICHARD: We offer here in evidence a copy of the by laws of the company, I suppose there is no question about their being the by-laws: if there is, we can prove it up—about that.

Referee WINTER: The attorney for the Eagle Mining and Improvement Company here offers in evidence a copy of the by-laws of the Eagle Mining and Improvement Company of New Mexico, and is marked "Exhibit K" and identified by the referee.

Col. PRICHARD: Now you may take the witness.

Cross-examination by Mr. FITCH:

Q. Mr. Rice, have you any letters signed by either yourself or Judge Hamilton, or copies of letters, or any letters signed by Judge Hamilton, or any copies of letters signed by yourself, or any written memorandum, contract or agreement between Judge Hamilton and the Eagle Mining & Improvement Company, besides such papers as have already been introduced in evidence in this case?

A. I don't—(don't put this answer down)—there are some letters here that you have called for, I don't remember whether they have been introduced or not. I have no other, no written contract with him, other than the letters you have.

Q. Have you any other letters signed by Judge Hamilton, or copies of letters signed by yourself, other than have already been introduced in evidence in this case?

A. I think not.

Q. I understand you to state that in the agreement you made between Judge Hamilton and yourself, as manager of the company, whereby he was to purchase the title of E. S. Parsons and Agnes Carpenter—just correct that, C. C. Parsons and Agnes Carpenter—he was to have the sum of fifteen thousand dollars, less the sum he

320 might be obliged to pay them to acquire their interests; that as a part of that agreement he was to surrender to you all his right or claim to the interest of E. S. Parsons in the Hopeful Mine and Millsite?

A. That was part of the agreement, yes sir.

Q. Your company acquired title and interest of E. S. Parsons, did it not?

A. Yes sir.

Q. Can you recollect at about the date at which it acquired it?

A. It was about a year before Judge Hamilton's death; a little more than that.

Q. How much did you pay for E. S. Parsons' interest?

Col. PRICHARD: Objected to as immaterial, as having no bearing upon the matters at issue.

Q. How much did your company pay for the interest?

A. Why, his interest in the Hopeful was ten thousand dollars.

Q. Is that what you paid him?

A. That is what we paid him for his interest in the Hopeful.

Q. Mine and Millsite?

A. Yes sir. The deed from him covered various other claims, but that was the stipulated amount for his Hopeful interests.

Q. As a matter of fact, you paid E. S. Parsons somewhere about the sum of thirty thousand dollars, didn't you?

A. Paid him thirty-four thousand dollars.

Col. PRICHARD: Objected to as immaterial and irrelevant.

Q. What other claims were included in this contract for which you paid this sum of thirty-four thousand dollars?

A. The Lady Frances, a half interest in the Etta Emma, 321 a half interest in the Bismark, Numbers One and Two, a one eighth interest in the Silver King, and I don't remember what interest it was, but it was a portion of the townsite—Parsons' townsite.

Q. Were any of those other mining claims or lands, except the Hopeful Mine and Millsite, patented at that time?

A. No, sir; except, well, this townsite was patented, and also the Silver King, the interest in the silver King. The Silver King was patented and also the townsite.

Q. Is it not a fact that Hopeful property was, and was regarded at that time, as the principal property, and that these others were mere outlying prospects, or adjunct, to the Hopeful Mine?

A. Not so considered.

Q. Are they all in the neighborhood of the Hopeful?

A. Yes, adjoining; all except the Silver King, which is a half mile away.

Q. Mr. Rice were you the manager of any other company besides the Eagle Mining & Improvement Company during these two years, from June, 1901, to June, 1903?

Col. PRICHARD: Objected to as irrelevant and immaterial.

A. I was.

Q. What other company?

Col. PRICHARD: Objected to as irrelevant and immaterial.

A. American Gold Mining Company.

Q. Did that company ever have any legal services rendered it by Judge Hamilton?

Col. PRICHARD: Objected to as irrelevant and immaterial.

A. It may have had some.

322 Q. Look at these two checks, marked "Exhibits D. and E.," Mr. Rice, and state whether or not you did not sign these checks as manager of the American Gold Mining Company, and not as manager of the Eagle Mining and Improvement Company, and whether as a matter of fact these checks were not paid by the American Gold Mining Company?

Col. PRICHARD: Objected to because the checks show upon their face how they were signed, and because it is irrelevant and immaterial, and because there is no matter involved in this proceeding showing any claim or demand against the American Gold Mining Company.

A. I did sign them as general manager for the American Gold Mining Company, and they were paid by that account, but it was charged to Judge Hamilton's account and proper credit given to the American Gold Mining Company account at the time.

Q. Were those checks given for services rendered by Judge Hamilton for and about the business of the American Gold Mining Company?

A. Not for the American Gold Mining Company, no sir.

Q. You say he did not render services for that company?

A. I said he may have rendered some; I have never had any account of any services that he rendered to the company.

Q. Well, you know he did, don't you?

A. I know he did some work there—

Q. Yes?

A. It was in a voluntary way, however.

Q. You know in regard to the option for the American Gold Mining Company that he secured on the Old Abe Mine?

A. The American Gold Mining Company never received any option on the Old Abe Mine.

323 Q. Isn't it a fact that it owned, or claimed to own it, at one time?

A. No, sir.

Q. Never did?

A. Never did.

Q. Did they work it?

A. They never did.

Q. They never had any interest in it?

A. Never had any interest.

Q. What did this American Gold Mining Company have any interest in or pretend to own?

Col. PRICHARD: Objected to as irrelevant and immaterial, and be-

cause there is no claim of Judge Hamilton against the American Gold Mining Company involved in these cases.

A. The American Gold Mining Company had what is known as the American Gold Mining Group, located about six miles from Parsons and three miles from Nogal.

Q. Was it in connection with that group, that Judge Hamilton rendered services?

A. I said he may have rendered some services; I haven't any bill for any services that he rendered.

Q. Do you mean to say, Mr. Rice, that you paid Judge Hamilton for services rendered referring to the Eagle Mining & Improvement Company by check drawn by you as manager of the American Gold Mining Company?

A. At the time I gave those checks it was for that purpose, yes sir.

Q. It was for that purpose?

A. Yes sir.

Q. What was the occasion on which you sent these checks to Judge Hamilton?

Col PRICHARD: Objected to as irrelevant and immaterial.

324 A. In response to the letters from him asking for money.

Q. Can you produce those letters?

A. I don't think I can now.

Q. Where are they?

A. I don't know. It may have been letters, it may have been personal requests. I don't know now.

Q. Can you swear now on what account Judge Hamilton requested payments of money, or some money?

A. On his account; of his contract with me. We never had but the one contract and no other account to be paid on.

Q. Now answer my question, Mr. Rice. Did Judge Hamilton—On what account did Judge Hamilton request you to pay this money to him; or did he say on what account?

A. On account of the contract between him and me.

Q. Did he so state at that time?

A. Not specifically.

Q. He didn't; simply requested money?

A. Yes.

Q. And when he requested this money you gave him checks of the American Gold Mining Company, did you?

A. I gave him those two checks as manager of the American Gold Mining Company.

Q. You professed to be a very warm friend of Judge Hamilton during his lifetime, didn't you?

A. Well, I was, and am yet, as far as that is concerned—as long as he lived.

Q. Your friendship didn't cease with his death?

No answer.

Q. You don't know whether you sent these checks to Judge 325 Hamilton in response to his letters to you requesting remittances, or whether it was personal requests made to you?

A. I cannot answer that just now, no.

Q. If these checks were at these dates, July 29, 1902, and September 25, 1903—did the Eagle Mining & Improvement Company have any bank account anywhere?

A. Yes sir.

Q. At these dates you were drawing checks as manager of the Eagle Mining & Improvement Company, were you not, to pay other expenses or bills against them?

A. I was.

Q. Then why did you draw these checks on the American Gold Mining Company to pay bills of the Eagle Mining & Improvement Company?

A. Well, at that time there might have been a shortage in the account of the Eagle Mining & Improvement Company, and I transferred the account in that way, which was frequently done; may not have had the money to draw him a check on the Eagle Company account, and gave it to him out of the other.

Q. Are you guessing, Mr. Rice, or do you swear that that was the fact at that particular time?

A. It may be the fact or it may not; it may have been. I cannot tell about it—just what his balance was in the Eagle Company at that time.

Q. And at the same time you were drawing checks, you say, to pay other expenses of the Eagle Mining and Improvement Company, at these same dates on their own checks.

A. No, I don't say on these same dates.

Q. You can't say what was the particular occasion of your drawing these checks that have the name of the American Gold Mining Company on them, can you?

A. No, I cannot give you any special occasion for it.

326 Q. Nor how they were sent or delivered?

A. They may have been delivered in person; might have been sent to him.

Q. Do you know Mr. Rice?

A. I don't know.

Q. Well; were you manager of any other company or association during this period?

Col. PRICHARD: Objected to as immaterial and irrelevant.

A. No, I was not manager of any other company.

Q. Or association of persons doing business here in New Mexico?

Col. PRICHARD: Objected to as immaterial and irrelevant.

A. Not at that time, no sir.

Q. Not during these two years from June, 1901, to June, 1903?

A. No.

Q. Did you have a check-book printed, a check-book for the Eagle Mining and Improvement Company, with its name printed on the margin during this period?

A. I did have one, yes; perhaps two. Part of the checks were printed and part not.

Q. When did you first get this checkbook—regular check book for the company?

Col. PRICHARD: Objected to as irrelevant and immaterial.

A. I cannot answer that question I do not know exactly.

Q. Were you manager of the American Gold Mining Company in February, 1902?

Col. PRICHARD: Objected to as irrelevant and immaterial.

A. I don't remember the date that I was made manager of that company. I was made when the—I think it was after that time, however.

327 Q. Are you certain?

A. I am not certain.

Q. You testified that you made a payment to Judge Hamilton in money at White Oaks, I think.

A. I did testify to that, yes sir.

Q. Just state the date of that, please, without looking at your memorandum?

A. I cannot do it without—

Q. Independent of that memorandum that you have referred to in your examination in chief, are you able to state when that payment was made, or the amount of, or the circumstances in regard to it?

A. I feel confident that the amount was fifty dollars. The circumstances were these: That Judge Hamilton was there at White Oaks and said he needed a little money, and I took him down to the bank and asked the cashier to give him the money.

Q. You recollect that without reference to that memorandum?

A. I recollect it, but the date I cannot give now.

Q. But you recollect the circumstances, do you?

A. I recollect the circumstances.

Q. Went to the bank and asked the cashier to give him some money—give Judge Hamilton some money.

A. Yes sir.

Q. Didn't you draw a check?

A. He drew a check himself; he was our bookkeeper at the time.

Q. You the cashier?

A. The cashier; he was the bookkeeper of the Eagle Mining & Improvement Company at the time.

Q. What has become of that check?

A. It is there in the bank with the rest of the papers; I neglected to go and get it; that's all.

Q. You didn't get it?

328 Q. A. In fact I have not been over to White Oaks for quite a while.

Q. Now, what other payments do you recollect of making to Judge Hamilton in money, yourself, outside of this fifty dollars you have testified to?

A. I haven't any other outside of the memorandum you have there.

Q. Well, without referring to that memorandum, can you state any other payments that you made yourself?

A. No sir.

Q. Did you make any yourself?

A. I have stated I had not.

Q. Then this matter that you spoke about, the payment in currency of March 3d of one hundred dollars, you didn't make any such payment?

A. I did. The memorandum you have there—Give me that memorandum.

Q. I have not seen that memorandum; it has not been introduced in evidence. I am asking you if you made any other payments?

A. Aside from what I stated in that memorandum—

Q. Now I am asking you outside of this fifty dollars that you say you paid him in cash, what other payments you say you made?

A. Well, I made a payment on whatever that date is there of one hundred dollars in Chicago to Judge Hamilton in currency, and I also gave him a draft, two drafts for five hundred dollars each for convenience in getting, or being able to pay whatever he had to pay on some options he was going to get at that time.

Col. PRICHARD: On what options?

A. Options on the interests of Agnes Carpenter and C. C. Parsons.

329 Q. You paid him that money for the getting of those options, did you?

A. I paid him that money so he would have it to use in procuring those options, yes sir.

Q. I thought you said you paid him fifty-five hundred dollars, the checks in evidence here for that purpose?

A. That was along in March, and the fifty-five hundred dollars was the total amount to be paid.

Q. If the fifty-five hundred dollars was the total amount to be paid, why did you give him these two other drafts?

A. Because he requested it; said he might need about a thousand dollars; might need about five hundred dollars and that he would have to have that much money with him.

Q. Then when it came to giving the fifty-five hundred dollar check to make the final payment for these interests, you gave him the full fifty-five hundred dollars again?

A. I gave him the full fifty-five hundred dollars. I didn't give it to him again, because I hadn't given it to him at that time.

Q. What did you give those two drafts for five hundred dollars each for?

A. For the purpose of paying whatever it was necessary for him to pay on those options; I think he told me he only had to pay two hundred and fifty dollars on them.

Q. Was that two hundred and fifty dollars in addition to the fifty-five hundred dollars?

A. No, sir, no; the fifty five hundred dollars was the total amount.

Q. Well, then, the two hundred and fifty dollars was part of the fifty-five hundred dollars, wasn't it?

330 A. It was not; that is, it was not as far as I was concerned. I gave him one thousand dollars to get those options; now, whatever he paid on the options would come out of the fifty-five hundred dollars when he paid them; I gave him fifty-five hundred dollars because he needed the money to close the account.

Q. If you had already paid one thousand dollars towards this fifty-five hundred dollars, why did you draw a check for fifty-five hundred dollars? What for?

A. Simply because I was paying it to him on account; it didn't make any difference whether I paid him one thousand dollars more or one thousand dollars less.

Q. Have you made any effort to get those drafts?

A. No; sir; I have not.

Q. Did you take a receipt from Judge Hamilton at that time?

A. I did not.

Q. How did you make this payment of one thousand dollars in Chicago?

A. Made it in currency.

Q. You didn't draw any check?

A. No, sir.

Q. Just pulled the money out of your pocket and gave it to him, did you?

A. Well, I don't remember whether I gave it to him or the treasurer of the company handed it to me and I handed it to him. That's all there was to that.

Q. You don't recollect how that was done?

A. Well, I recollect that it was done; I know that it was done at that time; he had to have some currency to go with at the time.

Q. You had just given him two drafts for one thousand dollars?

A. Yes sir; that was not to be used until he got down there; he going down to Kansas City, and down to Sumner, Iowa; he had those separate that way so that if he had to use one at Kansas City and one at Sumner, he could do so; that's all there was to that.

331 Q. You stated something about additional payment having been made to Judge Hamilton by the company or in the Chicago office of the company. Were you present when that payment was made?

A. I was not.

Q. Did Judge Hamilton ever state to you that he had received that money?

A. He did.

Q. When?

A. I cannot give you the date.

Q. Did he state it in writing?

A. I don't think he did.

Q. Do you swear, Mr. Rice, that Judge Hamilton made only two trips to Lincoln and one trip to White Oaks during the two years that he was attorney for the Eagle Mining & Improvement Company?

A. Well, I don't swear as to the exact number of trips; he may have made one more or one less.

Q. Don't you know, as a matter of fact, Mr. Rice, that he went up to Lincoln County about once a month during those two years?

A. I know as a matter of fact that he didn't make a trip once a month for two years.

Q. Then you say he was only up there altogether some three or four times? Is that so?

A. I didn't say that.

Q. Well, how many times was he up there during that time? Now, I am not referring to Lincoln or White Oaks, particularly, but up to that County of Lincoln.

A. Well, I should say the limit of his number of trips to Lincoln County in our behalf was six; not to exceed six trips.

Q. Are you willing to swear positively as to that?

A. That is my remembrance of it.

Q. This agreement that you say you made with Judge 332 Hamilton, whereby he was to render legal services to you for the privilege of securing the title to some of the Hopeful Mine, some interest in the Hopeful Mine in behalf of the company, was not in writing was it?

A. No sir.

Q. Have you got any memorandum or letter signed by Judge Hamilton stating either in whole or in part what that contract was?

A. I have not.

Q. Did you ever write to him with regard to the terms of that contract?

A. I don't remember of ever writing to him in regard to the terms of that contract.

Q. You were present when the evidence was taken on behalf of the Hamilton heirs last spring in this office.

A. Yes, I was present.

Q. You wrote all the letters that were then introduced in evidence and which purported to have been written and signed by you, did you not?

Col. PRICHARD: Objected to as irrelevant, immaterial and not cross-examination: not proper cross-examination.

A. I wrote any letters that had my signature to them. I cannot identify them at this distance.

Q. Did you examine them at the time—those that were offered in evidence as purporting to have been written by you?

A. Those that were offered in evidence that were written by me I examined, yes sir.

Col. PRICHARD: Objected to as not cross-examination.

Q. You also received from Judge Hamilton, did you not, the letters, copies of which were introduced in evidence and purported to be written and signed by him and directed to yourself?

333 Col. PRICHARD: Objected to as not proper cross-examination.

A. I presume I did.

Q. Now this agreement that you say you had with Judge Hamil-

ton, that he was to perform legal services, how long a period was it that he was to perform the legal services?

A. Until the company was—Until the titles were perfected.

Q. Titles to what?

A. To the different claims that we had.

Q. Well how many claims did you have when this agreement was made? This agreement was made, I think, early in 1902, wasn't it?

A. I think so.

Q. Or was it in 1901, immediately after the organization of the company?

A. It was along in the spring following. We had about eighty-five or eighty-six claims at the time the company was organized, I think.

Q. At the time the company was organized you had eighty-five or eighty-six claims?

A. About that, yes, sir.

Q. When did you make this agreement with Judge Hamilton?

A. It was—The final agreement was made with him sometime during the spring after the organization of the company.

Q. He had been rendering services for the company from the time of its organization in June, 1901, to early in the spring of 1902, hadn't he?

A. Well, I don't think you have got the time of the organization correct. However, he did render services from the time of the organization up to the time of his death. Now, the exact date of our coming to an understanding as to what services he was to render and 334 what he was to receive for those services, I cannot give you.

Q. I think you said it was in the spring of 1902?

A. I say the exact date. My remembrance is that it was about that time; perhaps in February or March of that year.

Q. As a matter of fact you consulted Judge Hamilton in regard to acquiring these different interests of the Parsons heirs and the Hopeful property at or before the organization of the company, didn't you?

A. Yes, I did; quite a long time before the organization of the company.

Q. How long before?

A. Oh, it might have been a year before the organization of the company.

Q. Judge Hamilton prepared the incorporation papers for this company, I think you stated, did you not?

A. Yes sir.

Q. He attended to all the details here in New Mexico, complying with all the various requirements of the laws, did he not?

A. Yes sir.

Q. And to any and all the business of the company from that time up to the time that you say — made this agreement with him?

A. Well, up to the time of his death.

Q. Can you state how long it was after the incorporation of the company that you made this agreement with Judge Hamilton?

A. Oh, it may have been two or three months, or four months; I have forgotten; I cannot tell exactly; that was the general understanding.

Q. Then you didn't make this agreement with Judge Hamilton in the spring of 1902, did you?

A. Well, as I say, it was sometime after the organization 335 of the company that we came to a definite understanding in regard to the matter.

Q. Now I am trying to get from you when you had this definite understanding with Hamilton: how long after the organization of the company?

A. It might have been two or three months.

Q. Did you pay Judge Hamilton any money prior to the making of this alleged agreement with him?

A. Probably I did; I cannot tell the date I gave him money, except from memory.

Q. Have you got any checks to show for it?

A. If I have you have got them there.

Q. These represent all the money you have paid Judge Hamilton?

Col. PRICHARD: He has stated that twenty times.

Mr. FITCH: Well, all right.

Q. Was anything said by Judge Hamilton or yourself about paying him for any services he had rendered up to the time of this agreement?

A. Certainly; we had a perfect understanding about that and there never had been any question. If Judge Hamilton had lived this suit would not have been brought; there would have been no question as to our agreement or understanding; he would have carried out his contract with us and we would have carried out ours with him.

Mr. FITCH: Move to strike out all the answer of the witness not responsive to the question; incompetent; irrelevant.

Q. Now please answer that question, Mr. Rice.

A. What was the question?

Q. Read the question. Stenographer reads question: Was anything said by Judge Hamilton or yourself about paying him for any services he had rendered up to the time of this agreement?

A. This agreement embraced his entire services, from beginning to end.

336 Mr. FITCH: Move to strike out the answer as not responsive to the question. Read the question.

Col. PRICHARD: Object to the question being repeated, because it is answered.

Question read by stenographer: Was anything said by Judge Hamilton or yourself about paying him for any services he had rendered up to the time of this agreement?

A. This agreement was made to cover all the services rendered previously, and to be rendered.

Mr. FITCH: Move to strike out the answer as not responsive to the question.

Referee WINTER: Was anything said? You can answer yes or no.

A. Yes.

Q. Will you state just what was said and by whom it was said?

A. Judge Hamilton had rendered E. S. Parsons services previous to this time about the purchase of the property, and I had assumed the responsibility of that service, and we decided that the amount of practically ten thousand dollars would cover his claim for services rendered E. S. Parsons, and also services that he had rendered us, and to be rendered, in the organization and equipment of the property.

Mr. FITCH: Move to strike out the answer as not responsive. I will not repeat the question.

Col. PRICHARD: To which the attorney for the Eagle Mining & Improvement Company makes no objection.

Q. I think you stated that you had then—The company had at the time this agreement was made with Judge Hamilton about eighty claims?

A. Somewhere in that neighborhood; eighty-four or eighty-six claims.

Q. Owned them all at that time?

A. We owned a portion of them and had options on the 337 others; on part of them. Part of them we owned and part of them we had options on.

Q. You then owned options. You then owned interests in, or had options on, these eighty claims?

A. Well, somewhere in that neighborhood. I have forgotten exactly the number.

Q. Who had drawn up these options or the deeds for the interest that you had acquired?

A. Well, I had prepared options on the most of them myself.

Q. I understand when you speak about options you mean that you had secured contracts whereby upon the payment of a certain sum of money by the company, you acquired deeds, did you?

A. Yes sir.

Q. Then what services was Judge Hamilton to render in connection with these options, aside from drawing the deeds?

A. Examining titles, looking into titles and securing patents on unpatented claims.

Q. I am talking now about the options.

A. Well, he didn't have anything to do with the options.

Q. He looked up the titles, didn't he, and reported on them?

A. When the deeds were made he was to do that, yes; he didn't previous to that time.

Q. Did you get deeds during his lifetime to these various options?

A. Some of them.

Q. How many?

A. I cannot tell you the exact number.

Q. All there was about these options was that the company was to pay the money and get the deeds, wasn't it?

A. As far as the options were concerned, yes sir.

338 Q. Judge Hamilton examined the title to the claims on which you had options on which you obtained deeds prior to his death, did he not?

A. He did some of them; those that—

Q. All that you requested him to do?

A. All that we received deeds from, yes.

Q. Isn't it a fact, Mr. Rice, that he examined the title and reported as shown by the correspondence for all deeds or for all mining claims in which you had any interest, or upon which you had options, at the time this agreement was made?

A. I don't think that he had examined the titles to but very few of them; he may have examined the titles for some.

Q. He examined the titles to all that you requested him to, didn't he?

A. Yes.

Q. And the reason that these claims were not patented during his lifetime was that the company was not ready to patent them, wasn't it?

A. That was the reason.

Q. After you made this agreement with Judge Hamilton in reference to these claims that you stated, about eighty, did the company procure any interest or options on other claims?

A. Yes, sir.

Q. Prior to Judge Hamilton's death?

A. Yes, sir.

Q. On about how many properties?

A. Two hundred.

Q. Two hundred?

A. Yes.

Q. Did Judge Hamilton do any work, or was he consulted in regard to these additional options that you got?

A. Well, I didn't say there was two hundred options; we 339 acquired about two hundred claims; some of them were by location; some by option; some by location and some by option.

Q. Well, did Judge Hamilton do any work, or was he consulted with reference to any of those two hundred claims?

A. He drew the deeds for several of them; that is, quit claim deeds from the different parties that we acquired claims from.

Q. Did he examine the title to any of them?

A. No, sir; he didn't examine any titles, except he would take the location notice and prepare the deeds from the location notice; examining the title was not necessary until the preliminary surveys were made for applying for the patents; then the question of going into detail would come up.

Q. Well, he did all that was required of him by you and any of the officers of the company on these additional claims that you acquired, one way or another, didn't he?

A. Yes sir.

Q. The Eagle Mining and Improvement Company had an option on the Old Abe Mine, didn't it?

A. It did.

Q. When was that with reference to the time of this—that you

made this agreement with Judge Hamilton; before or after the agreement?

A. I think it was after.
Q. It was in 1901, wasn't it?
A. I think so.
Q. Or 1903?
A. 1902.
Q. What was the option price of that; the price?

Col. PRICHARD: Objected to as irrelevant, immaterial and not cross examination.

A. You mean the price we were to pay?
Q. The price you were to pay for the Old Abe Mine.

340 A. One hundred and fifty thousand dollars.
Q. Did you have any examination made—how much did you pay for that?

Col. PRICHARD: Objected to as irrelevant, immaterial and not proper cross examination.

A. We paid fifty thousand dollars on the option.
Q. Well, did you consult a lawyer, or have any examination made in regard to the title before you paid that fifty thousand dollars?

A. No, sir.
Q. Not at all?
No answer.
Q. Did you consult a lawyer as to the form of the option, or have one drawn up by him?

A. No, sir.
Q. Just did it yourself?
A. Yes, sir.
Q. You don't know whether Judge Hamilton—you didn't consult Judge Hamilton at all about that—I mean on the legal point?

A. Not on legal points, no sir.
Q. You know the officers of your company did to some extent, don't you, did consult him about that, don't you?

A. I don't know that the officers of the company consulted him particularly about it; they may have consulted him about —; I didn't.

Q. Never consulted him at all about it?
A. Oh, later on we talked about the matter; we had some consultation in regard to it later on, but not at the time; you were asking about what occurred at the time, and how much we paid.

Q. Well, then, as a matter of fact you did have occasion to consult a lawyer about that time, on the Old Abe, before you got through?

A. Later on, yes sir.
Q. And Judge Hamilton is the man you consulted?
A. Yes sir.
341 Q. Did your company ever pay Judge Hamilton anything for legal services in regard to this Old Abe deal, whether rendered at the time or after you had gotten into it, and for any legal services in connection, rendered in connection with those two hun-

dred other claims that you say some of which he rendered legal services in?

A. No; no specific amount paid for any such services as you mention. The services that he rendered with regard to these additional claims were contemplated in the organization of the company; getting hold of a large area of the country there for the general purposes of the company; Judge Hamilton and myself went into that very fully before our contract was made; what the object of the company was to be, what we were to do and what was to be done by the company.

Q. Were you contemplating acquiring the Old Abe mine at that time?

A. Not especially the Old Abe, no sir.

Q. How far is the Old Abe from the Hopeful property?

A. About thirty miles.

Q. Do you mean to swear, Mr. Rice, that Judge Hamilton made a contract with you to perform all the work that your company might require to be performed in the way of legal services without specifying the property or the time?

A. The time contemplated was the full organization and completion of the titles at the time that we were expecting to acquire, and erecting a reduction plant of quite considerable size.

Q. Yes, you have already sworn to that; at that time there was about eighty claims?

A. There was.

Q. Now I am asking you—and I wish you would pay attention to this question—did Judge Hamilton—Do you mean to 342 swear that Judge Hamilton entered into an agreement by which what he might make out of these two interests in the Hopeful Mine was to pay him for all the legal services that he might render your company for an indefinite period, and without specifying as to what property, nor on what property these services were to be had, or what the services were to be; do you mean to say that Judge Hamilton made such an agreement as that?

A. I mean to say that he made an agreement with me to cover the securing of titles on the property that we had at that time; had options on and had in contemplation.

Q. Exactly, so you stated?

A. I stated that once or twice.

Q. Some eighty claims?

A. Yes.

Q. Did you ever pay him for his services, services rendered in the way of advice or consultation in regard to the Old Abe deal?

A. I only paid him what I have testified to.

Q. Well, were any of these payments made for the Old Abe deal, that you have testified to, particularly?

A. There was no agreement with regard to what his services should be in the Old Abe deal and no payment has been made on that account.

Q. How about the two hundred other claims which you afterwards acquired interests in or options upon; was any payment made

for any services that he rendered in connection with those, or any of them?

A. No, because he didn't render any services.

Q. Didn't you say that you consulted him and that he examined the title as to some of them and prepared whatever deeds you required?

A. He prepared several deeds as I said before by taking the location notices and taking the description from the location notices and prepared some quit-claim deeds which were on some of those claims; the number I cannot state from memory.

Q. Where did he get the location notices?

A. Got them from the parties who made the locations and after they had been recorded in the county records.

Q. Where did Hamilton get them?

A. I furnished them.

Q. Well, you don't know how many of those deeds he drew up? I am speaking about those same two hundred additional odd properties that you acquired an interest in after—

A. I think there were six or eight deeds prepared, altogether.

Q. You never inquired whether the parties who gave those deeds owned the claims or not?

A. I knew they did.

Q. How did you know they did? How did you find it out?

A. From the fact that some of them were located for us; that is, they were located and these men gave quit-claim deeds and I paid for the location work.

Q. Is that the way you acquired these two hundred odd claims?

A. No, not all of them.

Q. Now those you didn't pay for the location, how did you acquire them; how did you satisfy yourself that the parties owned them?

A. Well, I knew they were in possession of them and had been for a series of years.

Q. Well, there was no examination of the records of Lincoln County made to determine as to who owned any one of these two hundred odd additional claims that you spoke of?

A. I don't think there was, no.

344 Q. You don't know whether Judge Hamilton did or did not, do you?

A. In fact, I know he did not.

Q. Don't you know that an abstract of a very large number of these claims was prepared and furnished to him?

A. Who prepared it? Do I know that—

Q. Don't you know that was a fact?

A. Furnished to him or by him?

Q. Furnished to him.

A. There was quite a large abstract, yes, furnished to him; he went down to Lincoln for that abstract.

Q. He went after it himself?

A. Yes, sir.

Q. You say another attorney was employed; how long after Judge

Hamilton's death? It became necessary to employ another attorney after Judge Hamilton's death; how long was that?

A. Oh, possibly a month.

Q. After you had the conversation with H. B. Hamilton, Jr.

A. It was within a very few days after I had the conversation with H. B. Hamilton, Jr.

Col. PRICHARD: You mean the first conversation?

A. Yes, the first conversation.

Q. About the first business that that attorney was employed to do was to bring this suit against the Hamiltons heirs wasn't it?

A. Yes, sir.

Q. That attorney was the present attorney in this suit?

A. Yes, sir.

Q. Who drew or prepared these tax deeds that you have offered in evidence here?

A. Mr. Hulbert. Hulbert was at that time county treasurer, I think, either deputy or county treasurer, Hulbert is the man who drew them up.

345 Q. Was Judge Hamilton there at the time?

A. Yes, sir.

Q. I think you stated you didn't know anything about Judge Hamilton being consulted or advising with the president and secretary and other officers of the company?

A. In regard to what?

Q. In regard to the business of the company, its legal matters generally; anything that a lawyer might be called upon to give advice in regard to.

A. I hardly think I stated that; I know that he was at the company's headquarters and that all the officers advised with him and talked with him about matters; I didn't mean to have you understand that they had not had any communication with him, because I got him to go to Chicago myself in connection with the organization of the company.

Q. For the very purpose of consulting the president and the other officers?

A. Yes sir.

Q. Well, do you mean to say that you didn't know that they consulted with him by mail?

A. I didn't intend to say that, no; you were referring to some specific instance in your previous question.

Q. I am referring now to what you testified to in your examination in chief in answer to Mr. Prichard's question; I am not referring to anything except the fact that you testified you didn't know about this correspondence, as I understand it.

A. I testified in answer to the question that I didn't know that they were in correspondence with him about specific matters; now, all the officers of the company were aware that he was acting as attorney for the company and had met and consulted with him in regard to matters pertaining to the company.

Q. And you knew further that in addition to meeting and

346 consulting him personally, you knew generally that they were consulting him more or less by letter, without knowing about what specific matters?

A. I don't know anything about the contents of the letters.

Q. I am not asking you that; I am asking, without knowing about the particular subjects they were consulting him about, you knew they did consult him more or less by letter, didn't you?

A. I discovered it, yes sir.

Q. In fact, you knew he was the general attorney of the company, attending to all their legal business?

A. Yes.

Mr. FITCH: That's all.

Redirect examination by Colonel PRICHARD:

Q. Mr. Rice, do you know—Referring to these two checks for fifty dollars, fifty and one hundred dollars each, signed by you as manager of the American Gold Mining Company, do you know whether or not the American Gold Mining Company was afterwards reimbursed for those checks?

Mr. FITCH: I object to that as immaterial and not proper redirect examination.

A. It was.

Q. Did you ever send any checks to Mr. Hamilton on account of services rendered for the American Gold Mining Company?

A. I never did.

Mr. FITCH: I object to that as not proper redirect examination and as leading and suggestive.

Q. Were these two five hundred dollars drafts that you have referred to embraced in the fifty-five hundred dollars that you afterwards paid for the interests of Parsons and Carpenter in this mine?

347 A. No sir.

Q. Were any of these items that you have referred to embraced in that fifty-five hundred dollars?

A. None, the fifty-five hundred dollars was a separate and distinct payment.

Q. What occasion, if any, was there for Mr. Hamilton to make a trip to Lincoln County as often as once a month, so far as your company was concerned?

A. There was not any occasion for it.

Mr. FITCH: Objection; immaterial.

Q. Did he make those—make trips that frequently in the interest of the company?

A. Not in the interest of the company.

Q. What services did Mr. Hamilton render as to the option on the Old Abe, or anything pertaining to the Old Abe; what legal services did he render, if any?

A. He was there at one time during the time we were getting up the option or getting the taxes adjusted on the Old Abe property; he was up there at White Oaks once on that account.

Q. Now, what services other than those you have mentioned did he render as to the Old Abe?

A. I do not remember any other services.

Q. What were those services?

Mr. FITCH: I object; that is repetition.

Q. When he was up there one time you were getting the options or looking after the taxes, what specific service did he render?

A. Well, I don't—I cannot say, specifically; it was of a general character; general advise.

Q. Did he make any specific charge for that trip?

A. No sir, not that I know of; never made any specific charge to me.

Q. Was that before or after this contract you had with 348 him?

A. That was after it; after that.

Q. What services that he was to render under the contract that were not rendered by him?

Mr. FITCH: I object to that as not proper re-direct examination.

Q. Answer the question, Mr. Rice.

A. What was it?

Q. Read the question.

Stenographer reads the question: What services that he was to render under the contract that were not rendered by him?

Col. PRICHARD: No, no; I'll modify that. What services was it agreed upon that he should render that were not rendered by him?

A. Well, the principal service that he was to render was to secure and a-just the patenting of those properties that we had; that was really the principal service I expected him to render; we didn't expect to have much, if any, litigation.

Q. Did he render any services in any litigation of the Eagle Mining & Improvement Company?

Mr. FITCH: I object to that as not proper re-direct examination, the attorney for the company having gone into that in the examination in chief and no cross-examination on that matter having been made.

A. What was the question?

Q. Read the question.

Stenographer reads question: Did he render any services in any litigation of the Eagle Mining & Improvement Company?

A. No.

Col. PRICHARD: That is all.

Recross-examination by Mr. FITCH:

Q. Mr. Rice, you didn't call on Judge Hamilton in his lifetime to render any services in regard to patenting any of these claims, did you?

A. No, sir.

Q. How much did this Eagle Mining & Improvement Company

349 spend in acquiring property up to the time of Judge Hamilton's death? Approximately, more or less?

Col. PRICHARD: That is objected to as not proper re-cross examination.

Mr. FITCH: Well, I will ask leave to ask this question as cross examination at this time, having omitted by inadvertence to have asked it on cross examination.

A. What was the question?

Q. Read the question.

Stenographer reads question: How much did this Eagle Mining & Improvement Company spend in acquiring property up to the time of Judge Hamilton's death—approximately, more or less?

Col. PRICHARD: We object for the reason that it is irrelevant and immaterial, also.

A. The amount of money expended, approximately, by the Eagle Mining & Improvement Company up to the time of Judge Hamilton's death in acquiring and paying for properties and paying for options, development and assessment work, would approximately amount to two hundred and fifty thousand dollars.

Mr. FITCH: That is all.

Col. PRICHARD: That is all, Mr. Rice.

Referre WINTER: —.

R. C. STURGEON, a witness on behalf of the Eagle Mining & Improvement Company in said causes, being first duly sworn to tell the truth, the whole truth and nothing but the truth, deposes and testifies as follows:

Direct examination by Colonel PRICHARD:

Q. Mr. Sturgeon, are you acquainted with the Eagle Mining & Improvement Company?

A. Yes sir.

Q. What relations, if any, did you sustain to the company about the second of October, 1902?

A. I was its secretary and treasurer.

350 Q. Do you remember about where you were at that time?

Where were you?

A. Chicago, Illinois.

Q. Did you know Judge Hamilton in his life time?

A. Yes.

Q. Do you remember whether he was in Chicago on or about that date?

A. October, 1902? I think he was.

Q. Did you remember about that time, before or after, that Judge Hamilton was paid any money by you or in your presence on account of the company?

A. I paid him five hundred dollars about that time, as near as I can recollect the date; I don't recollect the exact date on which I paid him the five hundred dollars.

Q. Did you hear Mr. Rice testify?

A. Most of his testimony, yes sir.

Q. Is this item of five hundred dollars embraced in any of the payments that he stated that he had made to Hamilton himself?

A. It was not embraced in any of the payments he said he made.

Q. How long have you been secretary and treasurer of the company, Mr. Sturgeon?

A. Since about April or May, I have forgotten which, 1902.

Q. State whether or not during his lifetime Judge Hamilton was recognized as the attorney of the company?

A. He was.

Q. Do you know by what officer of the company, if any, he was employed?

A. John M. Rice, the general manager.

Q. Did you have anything to do with the employment of Judge Hamilton?

A. Nothing whatever.

351 Q. Do you remember writing letters, certain letters to Judge Hamilton, which have been introduced here in evidence on the part of the Hamilton heirs, in answer to letter from Hamilton regarding pay for his services as attorney?

A. I remember writing letters to him in reply to his letters.

Q. At the time that those letters were written, were you aware of the contract that had been entered into between Judge Hamilton and Mr. Rice as to his services?

A. I was not.

Col. PRICHARD: Take the witness.

Cross-examination by Mr. FITCH:

Q. Judge Hamilton acted as attorney for the company before you became connected with it in any way, didn't he Mr. Sturgeon?

A. I believe so.

Q. How do you know, then, who employed him? Of your own knowledge I mean?

A. Well, he told me himself, when I first met him, that Mr. Rice had engaged him to look after the legal business of the company, and Mr. Rice had also told me the same thing.

Q. Let's see; when did you first become secretary and treasurer of the company?

A. I think in April, 1902. I am not exactly sure as to the month—April or May.

Q. And you remained secretary and treasurer up to what time?

A. I am yet.

Col. PRICHARD: I want to ask one question that I omitted. Was there any contract between you and Judge Hamilton as to what he should be paid for his services?

A. Any contract between me personally and Judge Hamilton?

Q. Yes.

352 A. None whatever between me personally and Judge Hamilton.

Mr. FITCH: (Resuming cross examination.) As secretary and treasurer of the company you had charge of all its papers, and also knew of the general details of the management of its business, or the details of the management of its business; in fact, you kept more track of its business than the president himself, didn't you?

A. I was in charge of the Chicago office and looked after the business of the company at the Chicago office; at the general office of the company; looked after all the details.

Q. All the business of the Chicago office passed under—was under your charge, wasn't it?

A. Yes, sir.

Q. When did you first learn of the alleged contract between Judge Hamilton and Mr. Rice on behalf of your company?

A. Not until after the death of Judge Hamilton.

Q. Then you learned it from Rice?

A. Yes, sir.

Mr. FITCH: That is all.

Col. PRICHARD: That is all.

Referee WINTER: J. M. RICE recalled on behalf of the Eagle Mining & Improvement Company.

Questions by Colonel PRICHARD:

Q. Mr. Rice, were you familiar with the interest known as the Johns interest in the Hopeful Mine?

A. I was.

Q. During your administration as manager?

A. I was.

Q. How much of an interest in the mine was that?

A. One-third.

Q. Do you know whether that interest was sold or not?

353 **Mr. FITCH:** Objected to as irrelevant, incompetent, immaterial.

A. It was.

Q. About when was it sold?

Mr. FITCH: Same objection.

A. In the early part of 1903, to the best of my recollection.

Q. Who was the purchaser?

Mr. FITCH: Same objection.

A. I was.

Q. Was that while you were managing the property?

A. It was.

Q. What was the purchase price for that interest?

Mr. FITCH: Same objection.

A. Three thousand dollars.

Col. PRICHARD: That is all I wanted to ask.

Mr. FITCH: I have nothing.

Referee WINTER: J. S. TILDEN, a witness in behalf of the Eagle Mining & Improvement Company, first being duly sworn to tell the truth, the whole truth and nothing but the truth, deposes and testifies as follows:

Direct examination by Col. PRICHARD:

Q. Mr. Tilden, have you any acquaintance with the company known as the Eagle Mining & Improvement Company?

A. Yes sir.

Q. How long have you known of the existence of that company?

A. Since its organization.

Q. Where do you reside, Mr. Tilden?

A. In Barrettsville, Ohio.

Q. What relation, if any, have you occupied toward that company?

A. I have been a director, and for the first two years and 354 about three months I was president of the company.

Q. Did you know Judge H. B. Hamilton in his lifetime?

A. Yes, sir.

Q. Do you know what position he occupied the last year or two of his life towards the company?

A. He was an attorney; and I believe—Well, he was attorney for the company; for our company.

Q. Did you have any correspondence with him, or he with you?

A. Yes, sir.

Q. During his attorneyship for the company?

A. Yes, sir.

Q. From whom did that correspondence first emanate?

Mr. FITCH: I object; that correspondence speaks for itself.

A. On his part.

Q. Do you remember of receiving any letters from him in relation to pay for services to the company—legal services?

Mr. FITCH: I object to that because the correspondence is the best evidence.

Col. PRICHARD: I am not asking as to the contents.

A. Well, yes; either his services or an account that was due him on a claim; part of the Hopeful property.

Q. Now, had you anything to do, previous to that time, with the employment of Judge Hamilton?

A. No, sir; I had not.

Q. When this correspondence was had between you and Judge Hamilton, did you know the nature of the arrangement or contract, whatever it may have been, between Mr. Rice and Judge Hamilton as to Hamilton's services?

A. I knew of no arrangement or contract.

Q. In the letters received by you from Judge Hamilton, 355 was there any allusion made to any contract?

Mr. FITCH: I object to that for the letters speak for themselves.

A. There was nothing.

Q. Did you ever make any arrangements or contract with Judge Hamilton as to the fees that were to be paid him?

Mr. FITCH: Object to that as being immaterial.

A. No sir.

Q. Do you know J. M. Rice?

A. Yes sir.

Q. What relation did he occupy to the company during this correspondence to which you refer?

A. He was general manager of the company since its organization.

Q. Where did he reside during that general management?

A. At Parsons, New Mexico.

Q. State whether you ever found out that Judge Hamilton had been employed by Mr. Rice.

A. Yes sir, I found out a short time before Judge Hamilton's death.

Q. From whom did you acquire this information?

A. From Mr. Rice.

Mr. FITCH: I want to object to that question as immaterial.

Q. State whether or not they—Judge Hamilton was recognized as the attorney for the company during the time of your presidency of it?

A. He was.

Q. State whether or not any arrangement or contract or agreement was entered into between Judge Hamilton and the company or yourself other than the arrangement or the contract between Rice and Judge Hamilton.

A. There was no other arrangement to my knowledge.

356 Mr. FITCH: Objected to as immaterial.

Q. At the time of this correspondence between you and Judge Hamilton, did you know of the arrangement between Hamilton and Rice as to how he would be paid for his services?

A. Not until a short time before Judge Hamilton's death. Mr. Rice came to Chicago and I met him and asked him what about Judge Hamilton's matter, telling him that I had received quite a number of letters from Judge Hamilton urging the payment of money; well, he asked me to go with him, and we went to the hotel, to his room, and he told me all about this arrangement, as he has told you today, and showed me these checks that he had given. That was the first knowledge I ever had of the contract or agreement between them.

Mr. FITCH: Now wait a minute. Move to strike out the witness's answer because it is not responsive to the question, and because it is hearsay and incompetent.

Q. What was your relation to the company at this time?

A. I was president of the company.

Col. PRICHARD: That is all.

Cross-examination by Mr. FITCH:

Q. I understand you were president of the company, Mr. Tilden, from its first organization up until the date of Judge Hamilton's death?

A. Well, now, I was until October, 1893—1903. I don't know just the date of Judge Hamilton's death.

Q. Well, it was in June, 1903, and this information that Mr. Rice convyed to you in regard to this alleged agreement or contract was about the month before Judge Hamilton's death?

A. Well, now, I won't say as to that, but it was not long after that I heard of Judge Hamilton's death. I won't say it was a month.

357 Q. Were you present in Chicago when Judge Hamilton went there and the company was organized—steps were taken to organize the company?

A. Yes sir.

Q. And at that time, the time of its organization, Judge Hamilton was there and acted as the attorney for the company and you consulted him?

A. He drew up the articles of incorporation, anyway; I believe he did; they were typewritten and already for signatures when I first became interested in the company; I had no knowledge of it until the articles of incorporation were all written and I became one of the incorporators.

Q. Judge Hamilton being present at the time?

A. I believe he was; I believe he was, sir.

Q. As a matter of fact he was there acting as legal adviser of the corporation, for the company, wasn't he?

A. Yes sir.

Q. And continued so to act from that time up to the date of his death, so far as you know?

Col. PRICHARD: Objected to because it is not proper cross examination.

A. He acted as attorney.

Q. Did you counsel him at any other time besides that time, the first time, in regard to the affairs of the company?

Col. PRICHARD: Objected to because it is not proper cross examination.

A. I don't think I ever consulted Judge Hamilton on any question.

Q. You wrote letters to him in regard to the company's business affairs?

A. In answer to letters. I don't know that I ever wrote him a letter only in answer to the letters that he wrote to me.

358 Q. Have you got the letters that he wrote to you, or copies of the letters that you wrote him?

A. What is that?

Q. Have you got the letters that he wrote you or copies of the letters that you wrote him?

A. I have not copies of the letters that I wrote him, and the letters that he wrote me I have sent—I think they are in court here, ain't they? I think I sent them to Mr. Rice.

Mr. FITCH: I now ask that these letters be produced.

Col. PRICHARD: You have got all those letters in. Do you want them in again?

Mr. FITCH: I don't if it is admitted that he received no letters from Judge Hamilton only those offered in evidence. That is what I am driving at.

Q. When you heard of this alleged agreement or contract between Rice and Judge Hamilton, what steps, if any, did you take to call Judge Hamilton's attention to it?

A. I took no steps at all. I am quite sure I didn't write him any further until his death.

Q. And you didn't see him between that time and his death?

A. No, sir.

Q. Did you ever meet him personally at any time except at the time of the incorporation of the company?

A. Yes, sir.

Q. When and where how many times?

A. I cannot give the dates, but I met him, I think, twice in Chicago.

Q. You saw him—What was he on there for, do you know?

A. Well, now, I don't know. I don't know whether he had any other business besides his connection with the Eagle Mining 359 and Improvement Company or not; I saw him at the Eagle Mining Company's office.

Q. But you do know he was there on the Eagle Mining Company's business, don't you?

A. Well, I cannot say what his business was. I don't know that he had any business with the company. He may have, however.

Q. Did you have any talk with him there at the company's office about the affairs of the company—its business affairs?

A. Why, yes; we discussed them.

Q. Discussed the matter of selling stock; of issuing stock, and one thing and another?

A. We discussed the matter. He was there, I think, a day or two.

Q. Both times there a day or two?

A. Yes.

Q. Were there any other directors or officers of the company present at any of these discussions besides you and he?

A. Well, now, I cannot say as to that.

Q. Is this your first visit to this country?

A. No, sir.

Q. Did you visit it during Judge Hamilton's lifetime?

A. Yes, sir.

Q. Did you meet Judge Hamilton?

A. I did.

Q. Where?

A. At his office over here at—well—I cannot—

Q. Here in El Paso?
 A. Why, in El Paso, yes.
 Q. How many times was that?
 A. Only once.
 Q. Did you discuss the affairs and business of the company with him then?

360 Col. PRICHARD: Objected to as immaterial, irrelevant, and not cross examination.

A. I went with him—I went with Mr. Rice to his office; Mr. Rice had some conversation with him; I was merely introduced to him; at that time I had not seen the property, the mining property, and was not particularly interested in what they were—they talked together about.

Q. They were talking about the company's business?
 A. Very likely; I won't say as to that; I was not interested and didn't pay any attention to it.
 Q. You were president of the company at that time?

A. Oh, no; not at that time; that was before the organization of the company.

Q. Oh, before the organization of the company? I am asking you whether during the time of the organization of the company you visited this country?

A. No sir.
 Q. What was the object of your visit to El Paso at that time?

Col. PRICHARD: Objected to as immaterial, and not cross examination.

A. Before the organization?
 Q. Yes.
 A. I came down to look at the property at Parsons.
 Q. What did you come down to El Paso for?

A. Couldn't get there any other way; this Rock Island road was not built at that time; we had to come by the Santa Fe down to El Paso and then took this "joint" up there to Capitan.

Mr. FITCH: Let the record show that the attorney for H. B. Hamilton and others calls for all of the letters written by H. B. Hamilton to the witness Tilden that are now in his possession, and the 361 following letters written by H. B. Hamilton to Mr. J. S. Tilden are produced as follows: Letter of March 12 1902; letter of June 13, 1902; another letter of June 13, 1902; a letter of September 12, 1902; also letters from H. B. Hamilton to said Tilden, copies of which have heretofore been introduced in evidence on behalf of H. B. Hamilton and others, as follows: Letter of July 5, 1902; letter of August 26, 1902; letter of November 17, 1902; letter of December 20, 1902; letter of December 10, 1902; letter of December 23, 1902; letter of April 11, 1903.

Q. Mr. Tilden, are all of these—Are these all the letters that you have received from Judge Hamilton?

A. They are all that I could find in my files.

Q. Do you recollect of having received any more?

A. I do not; I may have, however.

Q. Have you looked over the copies of letters that were heretofore introduced in evidence in this case, purporting to have been written by you?

A. No, sir; I never—I was not here at the other examination.

Q. I think you said that you have not copies or any of the answers that you wrote?

A. I have no copies of my letters to Judge Hamilton.

Q. Do you know the date of your first letter to Judge Hamilton?

A. I do not.

Q. Do you know approximately how long it was after the organization of the company that you first wrote him?

A. I have no idea.

Q. So far as you know, these are all of the letters that you have received from him?

A. So far as I know, yes, sir.

Q. Mr. Tilden, the first letter that you have produced here, 362 written by Judge Hamilton, dated March 13, 1902, letter opens with: "Your letter received; I have laid the matter before Mr. Bush, and while the matter changes the plan which he had in view somewhat, yet he thinks that something can be done." Do you remember of writing a letter to Judge Hamilton in regard to this matter?

A. Bush! Was the name Bush?

Q. Yes, sir.

A. No, sir; that is a new name to me—Bush is.

Q. I will ask you to look at this letter of Judge Hamilton's, dated March 13, 1902, being the earliest of the letters produced, and see what it relates to, and ask you if you wrote him prior to that date a letter in regard to the matter, or matters, mentioned in that letter?

Col. PRICHARD: Objected to as irrelevant, immaterial and not cross examination.

A. This letter has nothing to do with the Eagle Mining & Improvement Company at all, and I don't recollect just what it is; but I think it was some proposition that he was presenting to me from a party in Arizona, about some copper proposition there. Now, I won't be sure about that, but it has nothing to do with the Eagle Mining & Improvement Company.

Q. I will ask you, Mr. Tilden, whether or not the latter part of that letter relates to the affairs of the Eagle Mining & Improvement Company?

Col. PRICHARD: Objected to as irrelevant, immaterial; has no bearing in this case; and because the letter has not been introduced in evidence.

A. It is; I only read down to there and I didn't see that paragraph there relating to the Eagle Mining Company.

Col. PRICHARD: You say the last paragraph relates to the Eagle Mining Company?

A. Yes, the last paragraph.

363 Mr. FITCH: I offer the letter of March 13, 1902, in evidence.

Col. PRICHARD: Now I want to object to those letters, but don't want to fill the record with a lot of objections. If you will—

Referee WINTER: The letter here offered in evidence on behalf of the Hamilton heirs in said causes, written by Judge H. B. Hamilton to J. S. Tilden, is dated March 13, 1902, marked "Exhibit L" and identified by the referee by his initials.

Col. PRICHARD: Now put in my objections. The attorney for the Eagle Mining & Improvement Company objects to this letter as immaterial, irrelevant and incompetent, and because the same is a self-serving statement and declaration on the part of Hamilton, and has no bearing upon the issues in these cases.

Referee WINTER: The said letter being the one testified to by the witness, J. S. Tilden.

Q. I will ask you to look at this letter of Judge Hamilton, of June 13, 1902, and ask you to state whether that letter does not relate to the business and affairs and mining property of the Eagle Mining and Improvement Company?

Col. PRICHARD: Objected to because the letter shows for itself.

Mr. FITCH: Well, it may and it may not.

A. Yes, it relates to the Eagle Mining and Improvement Company.

Mr. FITCH: Well, we offer in evidence the letter of Judge Hamilton of June 13, 1902.

Col. PRICHARD: Now let me get my objection in. Objected to because the letter is immaterial, irrelevant, incompetent; that it is a self-serving declaration of Judge Hamilton, and because it is not proper cross examination.

Referee WINTER: The said letter just testified to by Witness Tilden is here placed in the possession of the referee, marked "Exhibit M," and identified by the referee by his initials.

Q. I will show you this letter from Judge Hamilton dated September 12, 1902, and ask if that relates to the affairs or business of the Eagle Mining and Improvement Company?

Col. PRICHARD: Objected to because the letter shows for itself.

A. The letter has relation to the Eagle Company.

Mr. FITCH: I offer the letter in evidence.

Col. PRICHARD: Allow me an objection now. Objected to, first, because the said letter is immaterial, irrelevant and incompetent; second, as not bearing upon the issue in this case; third, the alleged correspondence is not a connected correspondence with reference to matter involved in this suit; fourth, the letter of Judge Hamilton is a self-serving statement in his own interest.

Referee WINTER: The letter offered in evidence and testified to by the witness Tilden, dated September 12, 1902, is here offered to the referee, marked "Exhibit N," identified by the referee with his initials and taken charge of by him.

Q. I will show you this letter, dated 11-26-02, and ask you if that relates to the affairs of the Eagle Mining and Improvement Company?

Col. PRICHARD: Objected to, as the letter shows for itself.

A. The letter relates to the Eagle Company.

Mr. FITCH: I offer the letter in evidence.

Col. PRICHARD: Objected to because it is immaterial, irrelevant, incompetent and not proper cross examination, and is a self-serving statement, if anything, of H. B. Hamilton.

Referee WINTER: The letter dated 11-26-02 is here handed 365 to the referee, marked "Exhibit O" and identified by the referee with his initials, being the letter testified to by the witness Tilden.

Q. I will show you this letter of Judge Hamilton, dated December 23, 1902, and ask you whether or not the services alluded to there were services for the Eagle Mining & Improvement Company?

A. Couldn't be anything else, I don't think.

Q. Did you answer that letter?

A. I think I did.

Col. PRICHARD: Objected to.

Mr. FITCH: I will first offer that letter in evidence; I will withdraw the question.

Col. PRICHARD: Objected to by the attorney for the Eagle Mining & Improvement Company because the same is immaterial irrelevant and incompetent, not proper cross examination, and is a self-serving statement, if anything, of H. B. Hamilton.

Referee WINTER: The letter dated December 23, 1902, testified by the witness Tilden is here taken charge of by the referee and marked "Exhibit P" and identified by the referee with his initials.

Q. You have not a copy of your answer to this letter of Judge Hamilton of December 23, 1902, have you?

A. No sir, I have no copy.

Q. You say you answered it?

A. I don't remember of answering it; but it is my custom to answer letters.

Q. And you could not state what the substance of your letter was?

A. No, I could not.

Q. Mr. Tilden, when Judge Hamilton called your attention in this letter to the services he had been rendering the company for about a year and a half, and as to what those services were, what steps did you take at that time to find out whether he was 366 entitled to pay from the company for these services, or not?

Col. PRICHARD: Objected to as immaterial, irrelevant, incompetent.

A. I don't know that I took any at all until I saw Mr. Rice; then I asked him about the Hamilton matter.

Q. Mr. Tilden, Judge Hamilton died about—What was the date?

Col. PRICHARD: I think it was June 23, 1903.

Q. Judge Hamilton died June 23, 1903. You say your conversation with Mr. Rice was not long before his death; now, knowing the date of his death, can you state approximately when that conversation with Rice was?

A. I cannot do it.

Q. Where was it?

A. In Chicago.

Q. Well, can you state whether you met Mr. Rice in Chicago in the month of May, 1903, or the month of June?

A. I cannot state.

Q. Was it in the month of April, 1903?

A. I cannot state.

Q. Well, can you state whether it was in one of those three months?

A. Well, I would say it was not more than three months before Judge Hamilton's death, but it might have been; I have not means of knowing; only depending on memory, and that is uncertain.

Q. How many times did you meet Mr. Rice in Chicago in 1903, prior to the 23d of June?

A. Well, I cannot state that. I don't think more than two or three times; perhaps not more than once. I don't know as I did more than once.

Q. Were you corresponding with Mr. Rice from December, 1902, up to June?

367 A. Well, we used to exchange a few letters; not many.

Q. You never inquired in these letters of Mr. Rice in regard to Judge Hamilton's services?

A. No sir, I don't think so.

Q. I understand you, Mr. Tilden, that the signatures to these letters that have been shown you—

Col. PRICHARD: There is no question about the signatures.

Mr. FITCH: Then it is admitted that all the letters have Judge Hamilton's signature and were received by Mr. Tilden in course of the mails?

Col. PRICHARD: Yes.

Q. Well, I will ask you if this letter, purporting to be signed by Judge Hamilton and dated April 11, 1903, is Judge Hamilton's signature?

A. I should say it was.

Mr. FITCH: Now I offer to substitute this original letter in evidence for the copy heretofore introduced in evidence; in place of the copy.

Col. PRICHARD: Object to the introduction of it for the reason that it is immaterial, irrelevant, incompetent and not proper cross-examination, and is a self-serving statement of H. B. Hamilton, if anything, and because it is cumbering the record unnecessarily.

Referee WINTER: The said letter, dated April 11, 1903, testified to by the witness, J. S. Tilden, is here placed in possession of the referee, marked "Exhibit Q," identified by him with his initials, and taken charge of by him.

Q. Mr. Tilden, I will ask you to examine these letters, dated July 5, 1902, August 25, 1902, November 17, 1902, November 10, 1902, December 20, 1902, and ask you if that is Judge Hamilton's signature, and those letters were received by you in due course of the mail by you, in regard to each of them?

368 A. I should say the signature was the signature of Judge Hamilton.

Q. And the letters were received by you?

A. I have not looked them over, but I have no doubt of it.

Mr. FITCH: Now I make the offer, separately, to substitute each one of these letters—each one of these original letters for the copies heretofore introduced in evidence, and in lieu of such copies. I don't suppose you will require me to make the tender of each one separately to save the record?

Col. PRICHARD: No. Now the letters referred to are objected to by the attorney for the Eagle Mining & Improvement Company on the ground that they are immaterial, irrelevant, incompetent; because they are not cross examination, and because they are self-serving statements, if anything, of H. B. Hamilton, deceased, and because it is cumbering the record with letters, copies of which have already been filed.

Referee WINTER: The said letters, dated August 25, 1902, July 5, 1902, November 17, 1902, December 10, 1902, and December 20, 1902, identified by and testified to by the witness Tilden, are here handed to the referee and taken charge of by him and marked "Exhibits R. S. T. U. and V" and identified by him with his initials.

Q. Mr. Tilden, in answer to any of these letters of Judge Hamilton, or any other letters you received from him requesting that he be paid for his services by the — services to the company, or that the amount of his compensation be adjusted, did you in any way refer to that matter?

Col. PRICHARD: Objected to—

A. I don't think I did.

Col. PRICHARD: Well, if that is your answer it will not hurt anything.

369 Q. Did you ever send or cause any money to be sent to him?

A. No sir.

Q. Although you were president of the company you ignored the entire subject of the compensation as attorney for the company until your interview with Mr. Rice shortly before his death—before Judge Hamilton's death;—is that so?

A. I never sent him any money; the money was all paid through the office of Mr. Rice.

Q. You ignored the entire subject then?

A. My letters will show for themselves; I have no copies of them and my recollection is I have no recollection of writing him about it; I may have, however; the letters will show.

Q. Nor of ever having taken any steps to ascertain what compensation—or fix his compensation?

A. I did when I saw Mr. Rice; the very next time.

Q. How long—

A. Shortly before his death.

Q. Aside from that you took no steps whatever?

A. I think not; I may have, though; I may have written him about it; may have written Mr. Surgeon about it, but I have no recollection of it at all.

Q. Mr. Tilden, after having had the interview with Mr. Rice, I think you say not more than three months before Judge Hamilton's death, you wrote letters to him on April 11, 1903, May 14, 1903, May 21, 1903, June 19, 1903, and June 27, 1903—I think you are mistaken about the date of Judge Hamilton's death. It is the 29th.

Col. PRICHARD: He may have written on the 27th. I may be mistaken about the date of Judge Hamilton's death.

Q. Why did you not, in any of these letters, which have been introduced in evidence heretofore, state to Judge Hamilton what you had learned from Mr. Rice?

370 A. I don't believe—I won't be sure—but I don't think I ever wrote to Judge Hamilton after my conference with Mr. Rice; I may have, however; if there is a letter there of June 27th, from me, and he died about that time, why, I would think that it was written after my interview with Mr. Rice.

Mr. FITCH: What dates did I give there?

Stenographer reads: April 11, 1903, May 14, 1903, May 21, 1903, June 19, 1903, and June 27, 1903.

Mr. FITCH: I see I have dates wrong; I referred to Judge Hamilton's letters; I withdraw that question; take it out of the record.

Col. PRICHARD: Just strike it out.

Q. Mr. Tilden, apparently with Mr. Rice, and on May 11, 1903, May 18, 1903, May 26, 1903, and June 23, 1903, you wrote letters to Judge Hamilton which have heretofore been introduced in evidence in this case; why did you not, in these letters, or some of them, inform Judge Hamilton of what Mr. Rice had told you in regard to Judge Hamilton's compensation?

A. I don't know but I did, and I don't know as I did; I have no copies of the letters.

Q. The letters have been introduced in evidence and none of them alluded to any information you received from Mr. Rice on this subject; my question is; why did you not inform Mr. Hamilton in these letters, or some of them, some one of them, as to what you had learned from Mr. Rice?

Col. PRICHARD: Objected to as immaterial, irrelevant, incompetent, and because—

A. I cannot explain it.

Col. PRICHARD: —of an assumption that the letters contain matters which are not called to the attention of the witness, the letters themselves not being presented to the witness, nor copies thereof.

Mr. FITCH: I think it well to note here that the letters heretofore introduced in evidence are present here, but are in the custody of the Clerk of the Court; can that be noted on the record as the reason why they are not presented here?

Referee WINTER: I can state that they were placed in my possession and returned into court with my report as to the testimony taken in the former hearing; but where they are now, of course I have no knowledge.

Col. PRICHARD: Well, let the referee make that statement; put it down.

Mr. FITCH: That's all, Mr. Tilden.

Referee WINTER: —.

I. L. WEBBER, a witness on behalf of the Eagle Mining & Improvement Company, being first duly sworn to tell the truth, the whole truth and nothing but the truth in the above entitled causes, deposes and testifies as follows:

Direct examination by Colonel PRICHARD:

Q. Where do you reside, Mr. Webber?

A. In El Paso.

Q. How long have you been residing in El Paso?

A. Seven years, past.

Q. Have you any knowledge of the existence of a corporation known as the Eagle Mining & Improvement Company?

A. Yes sir.

Q. Where is that company incorporated?

A. Parsons, New Mexico.

Q. How long have you known of the existence of that company, more or less?

A. Well, several years; I know about when they first came out.

Q. Were you acquainted with Judge Hamilton in his lifetime?

A. Yes sir; very well acquainted.

Q. Do you remember of ever having any conversation 372 with him, or being present when a conversation was had in reference to his relations to the company, or the property of the company?

A. Yes sir; we talked about the company a great many times together.

Q. Where were those talks had?

A. Oh, on the streets and in his office and different places where we happened to come together.

Q. Can you recall any of those conversations, or the substance of any of those conversations at this time?

A. Why yes.

Q. Taking the first conversation that you have in mind, if you have such a conversation in mind, state what that conversation was, or the substance of the conversation?

A. Well, I couldn't tell exactly which the first was; I know we talked about it a good many times.

Mr. FITCH: Wait a minute. I want to interpose an objection to that question. I object to that as immaterial and irrelevant.

Q. Go ahead, Mr. Webber, and state what you were going to say?

A. He had told me that he was the attorney for the company a great many times, and we talked over the prospects of the company in different ways.

Q. What was said, if anything, in that conversation, or in any other conversation, as to his relations with the company?

Mr. FITCH: What date was this conversation?

Col. PRICHARD: I hav-n't got the date yet.

Q. Apart from his being the attorney of the company, or in connection with his being the attorney for the company?

Mr. FITCH: Wait a minute. I object to that question unless the date of the conversation is shown, at least approximately.

373 Q. Just answer the question. Just state what was said pro and con, and by whom.

A. Why, Judge Hamilton in his talks with me told me several times I should judge, that he was the attorney for the company, and I always inferred from his conversations that he was a conditional attorney. At one time, in front of the Sheldon Hotel, he made—

Mr. FITCH: Wait a minute. I object to that part of the answer.

A. I understand that inferences don't go. He made the remark to me—Well, first I made the remark; we were speaking in a general way about the company; I made the remark that I hoped and wished it would succeed, and would like to see it succeed; that we had had so many black eyes in the mining business around here that I would like to see something go through and succeed, and it would help the country; and he said it seems more than that to me; it is a personal matter to me; it means ten thousand dollars to me if it succeeds—

Mr. FITCH: Wait a minute. I move to strike out that part of the answer in which the witness stated in effect—stated what he inferred as to Mr. Hamilton being a conditional attorney.

Col. PRICHARD: We don't object to that; what we want is the conversation.

Q. Where was this conversation, if you remember?

A. In front of the Sheldon Hotel.

Q. Do you remember about when it was, Mr. Webber?

A. No, I couldn't give the date.

Q. Well, about how long ago?

A. Well, I should judge it was along in the fall or winter before Hamilton died, and it might have been towards the spring; 374 it was sometime anywhere from three to six months before he died; I should judge it wasn't over three months before he died; I will state it that way, to the best of my knowledge.

Q. What, if anything, was said as to the titles of the company?

A. He told me at one time that he held the title to the Hopeful Mine; that he had—that he held the title for the company of the Hopeful Mine; that is the way of it—that he held the title of the Hopeful Mine for the company.

Q. Did he refer to what title that was?

A. No, he didn't; no particular title.

Q. Do you remember whether that remark was made in the same conversation?

A. No, it was not.

Q. It was not?

A. No, it was in a different conversation, whether before or after I couldn't say; I think it was before.

Q. Do you remember where it was?

A. No, I couldn't say that, either.

Q. About how long was that, if you can remember before that—

A. I should judge it was two or three months.

Q. Before the other conversation?

A. Before the other conversation.

Col. PRICHARD: You can take the witness.

Cross-examination by Mr. FITCH:

Q. Mr. Webber, did Judge Hamilton state to you on what terms, or conditions, he held title to the Hopeful Mine for the company?

A. No he didn't; he just simply said that he held it for the company.

Q. In the conversation in which he stated that the success of the company meant ten thousand dollars to him, did he explain how it meant ten thousand dollars to him?

375 A. No, not in so many words; if inferences go, then I—I inferred that it would be his—

Mr. FITCH: I didn't ask you—strike out what he inferred.

A. In fact, he talked that way to me several times; he never stated the amount before.

Q. But in each of these conversations all he said was that it would mean money to him if the company succeeded. Was that it?

A. Yes.

Q. And in one conversation he stated that it meant ten thousand dollars to him if they succeeded in the enterprise?

A. Yes, if they succeeded in their enterprise.

Q. He didn't explain how?

A. No.

Mr. FITCH: That's all.

Referee WINTER: —.

ROBERT C. DRYDEN, a witness on behalf of the Eagle Mining & Improvement Company, being first duly sworn to tell the truth, the whole truth and nothing but the truth, deposes and testifies as follows:

Direct examination by Colonel PRICHARD:

Q. Doctor, where do you reside, sir?

A. At the present time at Dawson, New Mexico.

Q. What is your business or profession?

A. Physician and surgeon.

Q. How long have you been residing in that neighborhood?

A. Two years and two months.

Q. Have you any knowledge of the existence of a company known as the Eagle Mining and Improvement Company, in the Territory of New Mexico?

A. I have.

376 Q. Do you know whether they are operating—whether that company is operating any mines, or owns any mines in that county?

A. Do I know whether they are?

Q. Yes.

A. I do; they are.

Q. How long have you known of the existence of that company?

A. Why, about five years.

Q. Doctor, did you know H. B. Hamilton in his lifetime?

A. I did.

Q. Do you remember where you last saw him?

A. Yes; I last saw him at Parsons.

Q. Do you remember about when that was?

A. Well, I don't—I cannot give the date; it was a month or six weeks; probably two months, before his death.

Q. Had you seen him at that time at any other place than at Parsons?

A. Well, I rode over from White Oaks to Parsons with him and remained, I think, one day at Parsons.

Q. State whether you had any conversation with him, or he with you, in regard to the Eagle Mining & Improvement Company?

A. Yes, he told me a good deal of the affairs of the Eagle.

Q. Do you remember whether he said anything about his relations with the company?

A. Yes, yes; he told me his relations.

Q. What did he say in that respect?

Mr. FITCH: I object to that as incompetent, immaterial and irrelevant.

Q. You can go on and answer that question.

A. Why, he told me in what capacity he was serving the company; as to their agreements.

Q. Now state, please, what he said to you in reference to the agreement or agreements?

377 Mr. FITCH: Same objection.

A. Why, that he was retained as their—as their legal adviser; to attend to the legal end of the concern; that he was to purchase a certain piece of property, the Hopeful, known as the Hopeful Mine, for the company; did you want me to give the full conversation?

Q. Yes, yes; the whole thing; state fully.

A. That he was to purchase the Eagle—or the Hopeful Mine for the Eagle Company; that in compensation for his legal services in attending to the legal work of the company he was to get the differ-

ence between the purchase price and fifteen thousand dollars; that the company was to pay him fifteen thousand dollars and he would buy the property; that the company was to pay him the difference between the purchase price and the fifteen thousand dollars as it came due, as the purchase was done, as the purchases were made, and that the balance was *done*, as the purchases were made, and that the balance was to be paid when the company was on a good footing; when the mines were producing; it was to be paid out of that.

Q. Now, let us understand you. What was to be his compensation for these services, according to his statement?

A. Well, his compensation was the difference in the purchase price and fifteen thousand dollars, which he said was in the neighborhood of ten thousand dollars, that he would receive as his compensation. It seems to me that he said it was a little more than five thousand dollars that he paid for it; it was in the neighborhood of ten thousand dollars that he would get clear when the mines were in working order.

Q. Now, this little more than five thousand dollars; to whom did he pay this five thousand dollars? Who was it paid to according to his statement?

378 A. To whom?

Q. Yes, do you remember?

A. Why, eventually to the owners of the Hopeful mine.

Q. Whose interest was he buying; that is the question.

A. Why, the St. Johns estate and the Parsons, as I understood it.

Mr. FITCH: I objected to what the witness understood.

Q. Go ahead and make your statement.

A. Your question was to whom it was to be paid?

Q. Yes; to whom was this five thousand dollars, and some odd dollars, paid, if he said anything about it?

A. That was to the St. Johns estate and the Parsons; old man Parsons and his son Floyd, or "the Parsons" as he expressed it. I guess he meant Floyd.

Q. State whether or not he said anything in that conversation about any other compensation he was to receive.

Mr. FITCH: Objected to as immaterial, irrelevant, incompetent and leading.

A. He stated that that was to be his sole compensation.

Q. What did he state, if anything, as to what these legal services were, or were to be?

A. Legal advice as to the titles, and legal advice generally.

Q. For whom?

A. To Mr. Rice; giving his legal services; giving his advice and legal opinions to Mr. Rice on purchases and any legal dealings that he had with those from whom he bought property.

Q. Was anything said as to how long this—these legal services were to continue?

379 Mr. FITCH: Object; same objection.

Q. Go ahead.

A. Until the property was—the mills were running and earning; his compensation, this balance due over the purchase price, was to be paid him out of the proceeds of the mine; out of the milling profit.

Col. PRICHARD: Now you can take the witness.

Cross-examination by Mr. FITCH:

Q. Mr. Dryden, are you in the employ of the company in any capacity, or have you been?

A. No; I was considered as their surgeon, as surgeon for the property of the company, but not an employé.

Q. Are you still their surgeon—for the company?

A. Yes.

Q. Receiving a salary or compensation?

A. No sir.

Q. How are you paid for your services?

A. I am not paid for my services.

Q. They are gratis, are they?

A. Yes, my services; yes.

Q. Are you a stockholder or otherwise interested in this company?

A. I am a stockholder.

Q. To what amount?

A. Well, I don't know as—

Col. PRICHARD: I object to that: it is immaterial, irrelevant.

Q. You can answer it?

A. I don't know whether I want to answer it or not.

Q. You refuse to answer, then, do you?

A. Why, if I thought there was any reason why I should answer I would not object in the least.

Q. Do you refuse to answer the question?

Col. PRICHARD: Yes, I advise him to; it is immaterial; he has stated that he has an interest and that is enough; I object to 380 your prying into this man's private affairs in this way; you can report to the Court and let the Court handle it.

Mr. FITCH: I would like to have the witness state whether he refuses to answer or not.

A. Yes, I am financially interested; I have invested my money in it, that is why. Hamilton was talking to me, knowing that I was a stockholder; otherwise; I don't have the least idea that Judge Hamilton would have talked to me about the affairs of the company, had he not known that I was a stockholder of the company and interested in it.

Mr. FITCH: I move to strike all the witness's answer except his refusal to answer the question as not responsive and as attempting to state his opinion of Judge Hamilton's motives.

Q. You say this was about a month or six weeks before he died?

A. Yes, about that time.

Q. And he stated that he was to acquire the title or the interest of the Parsons heirs in the Hopeful Mine and mining property for the company, did he?

A. Yes.

Q. He didn't state that he had acquired it, did he?

A. Well, he didn't state that he absolutely had, but he said he held deeds, which left me to infer that he had.

Q. From whom did he say that he held the deeds?

A. I suppose from the owners.

Q. I am asking you from whom he said he held deeds?

A. From whom?

A. Yes.

Q. Yes.

Q. He stated at that time that he held deeds from the Parsons and St. Johns; you mean by St. Johns the heirs of the Johns estate?

381 A. Yes—Johns, not St. Johns.

Q. The fact is you don't remember very distinctly what that conversation was, do you?

A. In substance, yes.

Q. And he said he held deeds from the Johns?

A. Yes; I will state that I am not just positive whether that is Johns or St. Johns.

Q. What other services did he mention as having been performed by him—what particular services besides the acquiring of the title of the Parsons and Johns in the Hopeful Mine?

A. To advise the parties upon the legality of the purchases; he was to look into the titles of property.

Q. What properties?

A. All properties that the company might purchase.

Q. What properties did he mention?

A. Mining properties.

Q. Well, what properties? What mining properties?

A. The mining claims in and about the Hopeful.

Q. Well, what mining claims?

A. Those that are now considered the Eagle Mining and Improvement Company's property.

Q. Did he mention them at that time by name?

A. Why no; we had something like three hundred claims, and it would have been—The road should have been longer than thirty miles to have included the name of all those properties.

Q. Did he mention the names of any of them?

A. No.

Q. Did he mention any services in connection with the Old Abe deal?

A. No, not in particular; but as the Old Abe deal was the property of the company, why it was inferred by me.

382 Mr. FITCH: Move to strike out what the witness inferred.

Col. PRICHARD: Well, you brought it out. I object.

Q. Did he mention anything about getting patents to any claims?

A. Getting titles?

Q. Getting patents.

A. Yes; that was in the way of titles.

Q. Did he mention anything about patents, or getting patents?

A. Yes.

Q. What did he say about getting patents?

A. Well, I was asking him if he was looking after all that kind of work, and he said yes.

Q. Did you ask him about patents?

A. Yes.

Q. You are positive about that, are you?

A. Yes.

Q. Just as positive about that as that he said that he had deeds from the Johns—

A. Yes.

Q. —are you?

A. Yes.

Mr. FITCH: I believe that is all; or, let me ask another question.

Q. Do you say you remember, sir, have a distinct recollection of all that was said in that conversation?

A. I believe you placed emphasis on the "all," didn't you?

Q. Sir?

A. You placed emphasis on the "all;" I don't have a distinct recollection of all that was said in that conversation, two years or more ago, or three, or something—

Q. What time of the year was that?

A. Well, it was summer time; it was, it seems to me, May or June; but as I said, I cannot tell the date.

383 Q. How often did you see Judge Hamilton up there on the company's business from the time it was organized until the time of his death?

A. Either two or three times.

Q. Not more than that?

A. I don't remember of seeing him there oftener than that.

Q. Was this the last time?

A. This was the last time he was there before his death; I will say that at that time I was living in Parsons.

Q. Did you ever have any correspondence with Judge Hamilton in regard to the affairs of the Eagle Mining Company?

A. No; I never wrote Judge Hamilton on any subject; had no correspondence with him.

Mr. FITCH: That is all.

Col. PRICHARD: That is all.

Col. PRICHARD: I would like to recall Mr. Rice.

Mr. FITCH: I want to say I have no objection to your recalling him; I may want to cross examine him on something not in regard to this conversation; I don't object to your recalling him.

Col. PRICHARD: Certainly you will have the right to cross examine him, but not on something that will not be proper.

Mr. FITCH: Then I object to recalling him.

Col. PRICHARD: I ask to recall the Witness Rice for the purpose of asking one or two questions—

Mr. FITCH: Oh well, I'll not object to that.

Mr. RICE recalled and examined by Colonel Prichard:

Q. Mr. Rice, you stated I believe in answer to a question of Mr. Fitch that the first case that your attorney appeared in after the death of Judge Hamilton, that is your new attorney, was the 384 case of the Eagle Mining and Improvement Company against the Hamilton heirs, is that correct?

A. That is correct.

Q. Now state whether or not he appeared in any other cases for the Eagle Mining and Improvement Company?

Mr. FITCH: I object to that as immaterial, irrelevant and incompetent.

A. He has; several.

Q. How many, more or less?

Mr. FITCH: I object to that on the ground that we are not inquiring as to the value of Col. Prichard's services.

A. As many as ten or twelve.

Q. What was the nature and character of these cases?

Mr. FITCH: Objected to as irrelevant, incompetent, immaterial.

A. Most of them were lien cases.

Q. When you speak of cases, what do you refer to; what do you mean?

A. Suits, particularly, growing out of our—

Mr. FITCH: Same objection.

A. —growing out of our options on the Old Abe Mine.

Q. How did you come to employ an attorney to look after these cases?

Mr. FITCH: Same objection.

A. For the reason that Judge Hamilton had died and it seemed it was necessary to have the services of an attorney.

Q. In what other respects, if any, did this second attorney look after the business of the company as its attorney?

Mr. FITCH: Same objection.

A. In all of the legal matters pertaining to the affairs of the company.

385 Q. State whether or not that was the business that Judge Hamilton was to look after under your contract with him, if he had lived.

Mr. FITCH: Same objection.

A. Part of the business he was to have looked after if he had lived.

Mr. FITCH: And for the further reason that the question is leading and suggestive.

A. Had Judge Hamilton lived it would not have been necessary to hire another attorney.

Q. State whether or not you have incurred any expense in the employment of his second attorney?

Mr. FITCH: Same objection.

A. We certainly have.

Q. Have you had any information from this attorney as to what these expenses up to date would amount to, more or less?

Mr. FITCH: Same objection.

A. Well, no definite—

Q. You made an affidavit in this case, Mr. Rice, in which I notice the following statement, "and on account of such employment has incurred expenses of several thousand dollars which it would not have incurred had Judge Hamilton lived." What have you to say now as to that statement?

Mr. FITCH: I object to it, as to what the witness stated in the affidavit, as incompetent, irrelevant, immaterial, and not evidence here; and the question is incompetent, irrelevant and immaterial, and also leading and suggestive.

Q. Answer the question.

A. Why, I suppose it would probably amount to several thousand dollars.

Col. PRICHARD: That is all.

Mr. FITCH: Move to strike out the answer as to what the witness supposes.

386 Cross-examination by Mr. FITCH:

Q. Mr. Rice, are you still connected with the Eagle Mining & Improvement Company in any way?

A. I am.

Q. Are you a director of the company?

A. I am.

Q. Are you a stockholder of the company?

A. I am.

Q. To what extent?

Col. PRICHARD: Well, I object. No, he can state; I don't care.

A. I don't think it necessary to state the extent I am interested.

Q. Will you state or not?

A. I will not.

Q. Mr. Rice, did you ever demand of Judge Hamilton during his lifetime that he execute or deliver a deed from himself to the company for the interests which he had purchased?

Col. PRICHARD: Objected to as improper cross-examination, no allusion to this subject having been made in the direct examination of the witness upon his being recalled.

Mr. FITCH: The attorney for H. B. Hamilton and others here states that he desires the same privilege which has been claimed and accorded the attorney for the Eagle Mining & Improvement Company in recalling this witness, and desire to cross examine him on this particular matter.

Q. Well, what is your answer?

A. I didn't demand a deed from him for the reason that I had an understanding with Mr. Hamilton that whenever the time was ready to have a deed made to the company, he would make it; and I didn't have any idea that he would refuse to do so, and he didn't. I didn't make the demand.

Mr. FITCH: Move to strike out all of the answer of the 387 witness beginning with the words "for the reason that I had an understanding," etc.

Col. PRICHARD: Object to striking it out because brought out by the attorney for the—

Mr. FITCH: Just let me finish;—as not responsive to the question. That's all.

Col. PRICHARD: Never mind; you needn't put in my objection. It will show for itself.

Referee WINTER: The attorney for the Eagle Mining and Improvement Company here announces that that closes his case, with the exception that he may want to introduce some expert testimony; and the attorney for Mary B. Hamilton and others here announces that he will object to any such testimony, unless introduced at this time.

Col. PRICHARD: And in reponse thereto, the attorney for the Eagle Mining and Improvement Company states that the expert testimony which he expects to use is not here at this time and cannot be produced; that the parties whom he seeks this testimony from are residents of the Territory of New Mexico. That's all.

Mr. FITCH: I desire to announce here that I may want to introduce evidence in rebuttal consisting of certified copies of assessments, of tax sales, and all other proceedings leading up to the tax deeds tendered in evidence by the Eagle Mining and Improvement Company.

Col. PRICHARD: To which the attorney for the Eagle Mining and Improvement Company objects, and will object, because there is no issue made in this case as to the validity of the tax deeds which have been presented. That's all. They have been presented and filed and this testimony is proof.

388 In the District Court of the Sixth Judicial District of the Territory of New Mexico, within and for the County of Lincoln.

No. 1444.

EAGLE MINING & IMPROVEMENT COMPANY

vs.

MARY B. HAMILTON and Others.

No. 1539.

H. B. HAMILTON, JR., Administrator,
vs.

EAGLE MINING & IMPROVEMENT COMPANY.

To the Honorable Edward A. Mann, Judge of said Court:

W. H. Winter, one of the referees heretofore appointed in said causes to hear and take and report the testimony in said causes of such witnesses as reside at, or were to be found or produced in El Paso County, Texas, does hereby certify that on this, the 23d day of December, A. D. 1905, under and by virtue of a stipulation by and between the above named parties, entered into this day before me, the said W. H. Winter, having heretofore taken the oath prescribed by law for referee in such case made and provided, and having been heretofore appointed by the said court to take testimony herein, did on this, the 23d day of December, A. D. 1905, proceed to take the testimony herein of the witnesses hereinafter named and set forth.

There were present at said hearing Col. George W. Prichard, attorney of record for the said Eagle Mining & Improvement Company, and James G. Fitch, Esq., attorney of record for the said Mary B. Hamilton and others.

I further certify that all the testimony taken by me and all the proceedings had in said causes before me, was taken down in shorthand under and by virtue of said stipulation by and between the said parties and filed herewith, and thereafter transcribed on the type-writer.

389 That I administered the oath to each of the following named witnesses, who testified in said causes:

Humphrey B. Hamilton, who testified on behalf of the plaintiffs in No. 1444, and the defendants in No. 1539; also to J. M. Rice, R. C. Sturgeon, J. S. Tilden, I. L. Webber, and R. C. Dryden, each and all of said witnesses being sworn to depose the truth, the whole truth and nothing but the truth in said causes, and who testified in the order named:

That all of the evidence heard and taken and all the proceedings had in said causes was taken down in shorthand at the time such evidence was offered and at the time the said witnesses testified, and in my presence, and in the presence of the respective attorneys for the parties in said causes:

That after the taking of said testimony both the said parties by their respective attorneys announces that they had no further testimony to take at this time, whereupon I proceeded to close the taking of the testimony in said causes in so far as the same is or was to *be* taken before me, and therewith finally adjourned the further — of testimony in said causes on the 23d day of December, A. D. 1905.

I further certify that I herewith transmit, return and file my report of all the testimony taken and evidence offered before me, and of all other proceedings had before me, consisting of ninety-three pages of typewritten evidence herewith attached, the pages being numbered from one to ninety three, respectively.

I further certify that all of the exhibits offered in evidence and 390 testified to by the witnesses are herewith attached and filed herewith and made a part of this report, the same consisting of letters, deeds documents, checks, etc., the said exhibits being marked respectively Exhibits A to V, and I make the same part of this report;

And I further certify that my report, together with the ninety-three pages of testimony and proceedings had before me and filed herewith, together with the exhibits, lettered respectively A to V, twenty-two in number, shows a full, complete, fair, impartial and accurate statement of all the evidence taken and all the proceedings had before me in said causes.

My fees for taking such testimony in said causes are as follows:

For noting one meeting to take testimony.....	\$1.00
For noting one adjournment, the sum of.....	1.00
For writing out, transmitting and reporting the proceedings and testimony taken, for the first copy, 300 folios at 15¢ per folio of 100 words.....	45.00
Two additional copies at 5¢ each per folio.....	30.00
For swearing six witnesses at 25¢ each.....	1.50
For certifying and transmitting report, etc., to court.....	1.50
 Total	 \$80.00

Witness my hand at El Paso, Texas, this 23d day of December, A. D. 1905.

(Signed)

W. H. WINTER.

EXHIBIT A. W. H. W.

No. 140.

EL PASO, Feb. 18th, 1902.

First National Bank of El Paso, Texas,

Pay to the order of H. B. Hamilton..... \$150.00
One Hundred and fifty..... Dollars.

JOHN M. RICE, Manager.

391 Endorsed: H. B. Hamilton, J. S. Morrison, Atchison, To-
peka & Santa Fe R'y Co. Feb. 24, 1902, J. S. Morrison, City
Passenger Agt., El Paso, Texas. Stamped on face: First
National Bank paid Feb. 24, 1902, El Paso, Texas.

EXHIBIT B. W. H. W.

No. 50.

EL PASO, TEXAS, *May 17, 1902.*

The First National Bank of El Paso

Pay to the order of H. B. Hamilton \$200.00 Two Hundred Dollars.
JOHN M. RICE, *Manager.*

Endorsed: H. B. Hamilton. Stamped on face: First National
Bank paid May 20, 1902, El Paso, Texas. Printed across the left-
hand end: Eagle Mining & Improvement Company, Parsons, N. M.

EXHIBIT C. W. H. W.

No. 138.

EL PASO, TEXAS, *June 30, 1902.*

The First National Bank of El Paso

Pay to the order of H. B. Hamilton \$5500.00 Fifty-five hundred
Dollars.

JOHN M. RICE, *Manager.*

Endorsed: H. B. Hamilton. Stamped on face: First National
Bank paid June 28, 1902 El Paso, Texas. Printed across the left
hand end: Eagle Mining & Improvement Co. Parsons, N. M.

EXHIBIT D. W. H. W.

No. 184.

EL PASO, TEXAS, *July 29, 1902.*

The First National Bank of El Paso

Pay to the order of H. B. Hamilton \$100.00 One hundred Dollars.
JOHN M. RICE, *Manager.*

Endorsed: H. B. Hamilton. Stamped on face: First National
Bank paid Aug. 1, 1902, El Paso Texas. Printed across left-hand
end: American Gold Mining Company, Nogal, N. M.

EXHIBIT E. W. H. W.

392

No. 11.

EL PASO, TEXAS, *April 25, 1903.*

The First National Bank of El Paso

Pay to the order of H. B. Hamilton \$50.00 Fifty no 100 Dollars.
AMERICAN GOLD MINING CO.
JOHN M. RICE, *Manager.*

Endorsed: H. B. Hamilton. Pay to the order of Southwester Mercantile Co. T. C. Hill. Pay to the order of The First National Bank, El Paso, Texas. Southwestern Mercantile Co. State National Bank. Paid May 2, 1903, El Paso Texas. Stamped on face: P. T. First National Bank. Paid May 2, 1903, El Paso Texas. Printed across the left-hand end: American Gold Mining Co. Nogal, N. M.

EXHIBIT F. W. H. W.

Tax Deed.

Know all men by these presents: That, whereas, the following described real property, viz: One-sixth (1-6) interest in Hopeful Lodge and one-half ($\frac{1}{2}$) interest in Parsons City, situated in the County of Lincoln and Territory of New Mexico, was subject to taxation for the year A. D. 1898; and whereas the taxes assessed upon said real property for the year aforesaid remained due and unpaid at the date of the sale hereinafter mentioned; and whereas the treasurer and ex-officio collector of said county did on the 14th day of April, A. D. 1900, by virtue of the authority of the judgment and order of sale of the District Court in and for said County of Lincoln, in the Fifth Judicial District of the Territory of New Mexico, entered on the 28th day of February, A. D. 1900, at the sale begun and publicly held on the 14th day of April A. D. 1900, expose at public sale at the front door of the court house in the Town of Lincoln, the county seat of said county, in substantial conformity with all the requisitions of the statute in such case made and pro-

393 vided, the real property above described for the payment of the taxes, interest and cost then due and remaining unpaid upon said property; and whereas at the place aforesaid said property could not be sold for the amount of taxes and charges thereon, and was, therefore, bid off by the treasurer and ex-officio collector of said County for the sum of Forty seven Dollars and Seventy Cents, the whole amount of tax and charges then due; and whereas for the sum of Sixty-four Dollars and Eighty-seven Cents, paid to the Treasurer and ex-Officio Collector of said county on the 8th day of May, 1902, the Treasurer and ex-Officio Collector did assign the certificate of sale of said property and all the interest of said county in said property to The Eagle Mining & Improvement Company of the County of Lincoln and Territory of New Mexico; and whereas three years have elapsed since the date of said sale and the said property has not been redeemed therefrom as provided by law:

Now, therefore, I, E. W. Hulbert, Treasurer and ex-Officio Collector of the County aforesaid, for and in consideration of the sum of sixty-four dollars and eighty-seven cents, taxes, costs and interest due on said property for the year A. D. 1898, to the Treasurer and ex-Officio Collector, paid as aforesaid, and by virtue of the statute in such case made and provided, have granted, bargained and sold, and by these presents do grant, bargain and sell unto the said Eagle Mining and Improvement Company, its successors and assigns, the

real property last hereinbefore described, to have and to hold unto it, the said Eagle Mining and Improvement Company, its successors and assigns forever, subject, however, to all rights of redemption provided by law.

394 In Witness Whereof, I, E. W. Hulbert, Treasurer and ex-Officio Collector as aforesaid, by virtue of the authority aforesaid, have hereunto set my hand and official character this 20th day of April, A. D. 1903.

E. W. HULBERT, [SEAL.]
Treasurer and ex-Officio Collector,
Lincoln County, New Mexico.

TERRITORY OF NEW MEXICO,
County of Lincoln, ss:

I hereby certify that before me, Leslie Ellis, Probate Clerk in and for said county, personally appeared the above named E. W. Hulbert, Treasurer and ex-Officio Collector of said county, personally known to me to be the Treasurer and ex-Officio Collector of said county at the date of the execution of the above conveyance, and to be the identical person whose name is affixed to and who executed the above conveyance, as Treasurer and ex-Officio Collector of said county, and who acknowledged the execution of the same to be his voluntary act and deed as Treasurer and ex-Officio Collector of said county, for the purpose therein expressed.

Witness my hand and official seal this 20th day of April, A. D. 1903.

[SEAL.]

LESLIE ELLIS,
Probate Clerk.

TERRITORY OF NEW MEXICO,
County of Lincoln, ss:

Filed for record this 20th day of April, A. D. 1903, at 8 a. m. and recorded on the 20th day of April, 1903, in Book V of D. R., on page 56.

LESLIE ELLIS,
Probate Clerk and ex-Officio Recorder.

EXHIBIT G. W. H. W.

Tax Deed.

Know all men by these presents: That whereas the following described real property, viz: Hopeful Mine and Millsite, Surveys No. 652A and 652B, situated in the County of Lincoln and Territory of New Mexico, was subject to taxation for the year 1897; and whereas the taxes assessed upon said real property for the year aforesaid remained due and unpaid at the date of the sale hereinafter mentioned; and whereas the Treasurer and ex-Officio Collector of said County did on the 14th day of April, A. D. 1900, by virtue of the authority in him vested by the judgment and order

of sale of the District Court in and for the said County of Lincoln, in the Fifth Judicial District of the Territory of New Mexico, entered on the 28th day of February, A. D. 1900, at a sale begun and publicly held on the 14th day of April, A. D. 1900, expose to public sale at the front door of the court house in the Town of Lincoln, the county seat of said County, in substantial conformity with all the requisitions of the statute in such cases made and provided, the real property above described for the payment of the taxes, interest and cost then due and remaining unpaid upon said property; and whereas, at the place aforesaid, said property could not be sold for the amount of tax and charges thereon, and was therefore bid off by the Treasurer and ex-Officio Collector for said County of Lincoln for the sum of Three Hundred and Fifty-six Dollars and twenty-four cents, the whole amount of tax and charges then due; and whereas for the sum of Four Hundred and Eighty-four Dollars and Forty-eight cents, paid to the Treasurer and ex-Officio Collector of said County on the 8th day of May, A. D. 1902, the said Treasurer and ex-Officio Collector did assign the certificate of sale of said property and all the interest of said county in said property to the Eagle Mining & Improvement Company of the County of Lincoln and Territory of New Mexico; and whereas three years have elapsed 396 since the date of said sale and the said property has not been redeemed therefrom as provided by law.

Now therefore, I E. W. Hulbert, Treasurer and ex-Officio Collector of the County aforesaid, for and in consideration of the sum of Four Hundred and Eighty-four Dollars and Forty-eight Cents, taxes, cost and interest due on said land for the year 1897, to the Treasurer and ex-Officio Collector paid as aforesaid, and by virtue of the statute in such case made and provided, have granted, bargained and sold, and by these presents do grant, bargain and sell unto the said Eagle Mining and Improvement Company, its successors and assigns, the real property last hereinbefore described, to have and to hold unto it, the said Eagle Mining and Improvement Company, its successors and assigns forever, subject, however, to all rights of redemption provided by law.

In Witness Whereof, I, E. W. Hulbert, Treasurer and ex-Officio Collector as aforesaid, by virtue of the authority aforesaid, have hereunto subscribed my name and official character on this 18th day of April, A. D. 1903.

E. W. HULBERT, [SEAL]
*Treasurer and ex-Officio Collector
of Lincoln County, New Mexico.*

TERRITORY OF NEW MEXICO,
County of Lincoln, ss.

I hereby certify that before me, Leslie Ellis, Probate Clerk in and for said county, personally appeared the above named E. W. Hulbert, Treasurer and ex-Officio Collector of said County, personally known to me to be the Treasurer and ex-Officio Collector of said County, at the date of the execution of the above conveyance and to be the identical person whose name is affixed to and who executed

397 the above conveyancee, as Treasurer and ex-Officio Collector of said County, and who acknowledged the execution of the same to be his voluntary act and deed as Treasurer and ex-Officio Collector of said County, for the purposes therein expressed. Witness my hand and official seal this 18th day of April, A. D. 1903.

[SEAL.]

LESLIE ELLIS,
Probate Clerk.

TERRITORY OF NEW MEXICO,
County of Lincoln, ss:

Filed for record this 18th day of April, A. D. 1903, at 6 a. m. and recorded on the 18th day of April, 1903, in book V of D. R. on page 54-5.

LESLIE ELLIS,
Probate Clerk and ex-Officio Recorder.

EXHIBIT H. W. H. W.

Tax Deed.

Know all Men by these Presents: That whereas the following described real property, viz: Five-sixths (5-6) interest Hopeful Mine, situated in the County of Lincoln and Territory of New Mexico, was subjected to taxation for the year A. D. 1898; and whereas the taxes assessed upon said real property for the year aforesaid remained due and unpaid at the date of the sale hereinafter mentioned; and whereas the Treasurer and ex-Officio Collector of said county did on the 14th day of April, A. D. 1900, by virtue of the authority in him vested by law and by the judgment and order of sale of the district court in and for said County of Lincoln, in the Fifth Judicial District of the Territory of New Mexico, entered on the 28th day of February, A. D. 1900, at the sale begun and publicly held on the 14th day of April, A. D. 1900, expose to public

398 sale at the front door of the court house in the town of Lincoln, the county seat of said county, in substantial conformity with all the requisitions of the statute in such case made and provided, the real property above described for the payment of the taxes, interest and cost then due and remaining unpaid upon said property; and whereas at the time and place aforesaid said property could not be sold for the amount of tax and charges thereon, and was therefore bid off by the Treasurer and ex-Officio Collector for said County of Lincoln for the sum of two hundred and thirty-six dollars and fifty-two cents, the whole amount of taxes and charges then due; and whereas for the sum of \$321.67 paid to the Treasurer and ex-Officio Collector of said county on the 8th day of May, A. D. 1902, the said Treasurer and ex-Officio Collector did assign the certificate of sale of said property and all the interest of said county in said property to the Eagle Mining and Improvement Company of the County of Lincoln and Territory of New Mexico; and whereas three years have elapsed since the date of said sale and

the said property has not been redeemed therefrom as provided by law.

Now therefore, I, E. W. Hulbert, Treasurer and ex-Officio Collector of the County aforesaid, for and in consideration of the sum of three hundred and twenty-one dollars and sixty-seven cents, taxes, cost and interest due on said real property for the year 1898, to the Treasurer and ex-Officio Collector paid as aforesaid, and by virtue of the statute in such case made and provided, have granted, bargained and sold, and by these presents do grant, bargain and sell unto the said Eagle Mining and Improvement Company, its successors and assigns forever, subject, however, to all rights of redemption provided by law.

In Witness Whereof, I, E. W. Hulbert, Treasurer and ex-Officio Collector as aforesaid, by virtue of the authority aforesaid, 399 have hereunto set my hand and official character on the 20th day of April, A. D. 1903.

E. W. HULBERT, [SEAL.]
Treasurer and ex-Officio Collector,
Lincoln County, New Mexico.

TERRITORY OF NEW MEXICO,
County of Lincoln, ss:

I hereby certify that before me, Leslie Ellis, probate clerk of said county, personally appeared the above named E. W. Hulbert, Treasurer and ex-Officio Collector of said county, personally known to me to be the Treasurer and ex-Officio Collector of said county at the date of the execution of the above conveyance and to be the identical person whose name is affixed to and who executed the above conveyance as Treasurer and ex-Officio Collector of said county, and who acknowledged the execution of, the same to be his voluntary act and deed as Treasurer and ex-Officio Collector of said county for the purposes therein expressed.

Witness my hand and official seal this 20th day of April, A. D. 1903.

[SEAL.]

LESLIE ELLIS,
Probate Clerk.

TERRITORY OF NEW MEXICO,
County of Lincoln, ss:

Filed for record this 20th day of April, A. D. 1903, at 9 a. m. and recorded on the 20th day of April, 1903, in Book V of D. R. on page- 58-9.

LESLIE ELLIS,
Probate Clerk and ex-Officio Recorder.

EXHIBIT I. W. H. W.

EL PASO, TEXAS, April 14, 1903.

Mr. J. M. Rice, White Oaks, N. M.

400 MY DEAR RICE: I think if the three years has expired on any of the tax certificates, which you have had signed to the Eagle or American Companies last spring, that you should

get the sheriff to make a deed to that portion of the property to which you would be entitled to a deed under the statute. I have no memorandum of it here, but you of course have the certificates which were assigned by the county at the time the taxes were paid and these will show the days of the sale of each piece of property and from that you can tell, or rather the sheriff can tell, to which portion you would be entitled to a deed. The records, of course, in the sheriff's office will also show, and I think it would be well to have the sheriff make a deed to all that portion to which you are entitled to a deed and have them put on record. I am glad you are getting favorable news from Sturgeon and I hope I may be able to carry the entire matter through before long.

Yours truly,

H. B. HAMILTON.

EXHIBIT J. W. H. W.

EL PASO, TEXAS, *March 14, 1901.*

Mr. J. M. Rice, Angus, New Mexico.

MY DEAR SIR: I have just received a letter this morning from C. C. Parsons in Kansas City asking about the sale of the Hopeful. He advises me that since he last wrote me Mr. Carpenter has died and that Mrs. Carpenter is anxious to sell the property and wishes to know what the prospect is. I think they are in a condition of mind to deal with favorably upon this property, and I have thought that it would be advisable, if your people would do so, to arrange to close the deal with them *so soon as possible*. I have thought of writing to them and get them to put deeds in escrow, either 401 in the bank at Kansas City, Albuquerque or here, for say a short period of time, so that we could close the deal with them. In my correspondence with them before in reference to putting up the deeds, they desired to have them put up in Kansas City or Albuquerque, rather than here. It might be, however, that I could get the deed up either here or at Albuquerque, now. If you think that I can make a deal with your people within the next forty days or sixty days or thirty days, I will try to get them to put up the deeds. Please write me at once and let me know. Parsons in his letter to me speaks of wanting to deal for cash, and selling at a low figure if we will pay the cash. They seem anxious to sell, and if we could deal with them on a cash basis, I am satisfied I can get the property at what is comparatively a low figure. Am sure I could do so if I could see them. Please let me know what you think the prospect is and I will try to get the property tied up. I do not care, of course, to give them any assurances or ask them to tie up the property unless I can give them a reasonable assurance that the property will be taken.

I will write you today or tomorrow as to the salt property.

Yours truly,

H. B. HAMILTON.

(Exhibit K are the By-Laws of the Company and not asked for.)

EXHIBIT L. W. H. W.

EL PASO, TEXAS, *March 13th, 1902.*

Mr. J. S. Tilden, care First National Bank, Garrettsville, Ohio.

402 MY DEAR MR. TILDEN: Your letter received. I have laid the matter before Mr. Bush, and while the matter changes the plan which he had had in view somewhat, yet he thinks that something can be done. He, however, will leave tonight or tomorrow night for Kansas City, where he goes on some business, and tells me and instructed me to say to you that he will try and take two or three days and run over to Cleveland or to your town to see you. He is not unfavorable to your proposition, as you people present it, and I am quite satisfied that if he goes to see you and you can talk the matter over with him and have him present to you fully, as he will be able to do, the paying possibilities of the enterprise, I have no doubt that some amicable business arrangement can be made whereby you and your people will take hold of it. You will find him a very intelligent and pleasant gentleman and quite well posted in this matter. He may write or wire you from Kansas City what day he will meet you, and you can arrange to have your people meet him on his arrival. He has one or two propositions from other sources in the matter, which are not altogether satisfactory, and if he goes to Ohio you may be able to arrange with him. The company can be organized here under the laws of New Mexico and everything conducted at this end of the line on a basis that will be perfectly satisfactory to you and the others who may take hold of it. Mr. Rice is here today from the mine at Parsons. He reports things encouraging up there. I hope Mr. George and the other people in Chicago are pushing the sale of the stock, as it is important for us to get sufficient funds here to take up the Hopeful property and have the deeds secured to the Company, as I explained to you in Chicago.

Hoping you will meet Mr. Bush and that things may turn out satisfactory, I remain,

Yours truly,

H. B. HAMITON.

403

"EXHIBIT M." W. H. W.

EL PASO, TEXAS, *June 13, 1902.*

Mr. J. S. Tilden, Garrettsville, Ohio.

DEAR MR. TILDEN: I did not wire you from Chicago for the reason that we were struggling with the Knight matter until Saturday evening at three or four o'clock; then I concluded that a telegram would not reach you if sent to Denver, and I was not sure where I could reach you by wire. After a hard struggle we got the matter adjusted on a basis that I think will be final. Either the company will get the whole of the nine mines or Dr. Knight, will take them. In the event the company should get them back Dr. Knight will get his money, \$5000.00. Sturgeon said he would write

or telegraph you explaining about it. I suppose likely both he and Mr. Rice have written you. It looked as though the whole matter was going to fall through up till Saturday noon; but realizing the importance of getting Dr. Knoth out of the company and getting the matter adjusted on some fair basis, I stayed with him until I got the matter adjusted. I hope now the company and its business will move along harmoniously and successfully, as I think it will. The Studebaker crowd from South Bend have been to the mine and were down here on Monday, meeting myself, Mr. Detamble and Mr. Shriner. We spent the day here Monday. They had some assays made from the mines, from the ore which they say they took out of the mines. These assays were wholly unsatisfactory and I advised them to go back to the mines with Detamble and Shriner who had not yet been to the mine and let Mr. Lloyd and Mr. Rice make a run for them on the mill. I was satisfied; as well as they,

404 that there was some mistake in the assays which they had made. As a result of this Mr. Studebaker remained over and

went back with Mr. Detamble and Mr. Shriner in order that they might have the mill run and get more favorable results. This, as I told them, was the only real fair test of the mines, both to us and to themselves. It will be much more satisfactory to them to have the mill run off 20 or 30 tons with a satisfactory result than to have an assay of a few samples taken here and there from the ore body. I urged this, and as a result they are now at the mine and I presume are having the tests made now and will probably be back in Chicago the fore part of the week. I hope, as I feel quite sure, that these results will be satisfactory. They seemed delighted with the whole enterprise and its great possibilities, and I think a large block of the stock is certain to be taken by these people as soon as Mr. Studebaker, Mr. Detamble and Mr. Shriner return to Chicago and South Bend. I am anxious to get money enough by the first of July to take care of the other two Parsons' interests, the one at Kansas City and the one there at White Oaks. As you are perhaps advised, I came back through Wichita, Kansas, paid the old man Parsons \$10000.00 and got his deed to the Hopeful and sent it to Mr. Rice for record, and this makes it important that we take up the other interests at the earliest possible date, not later than the first day of July, for the reason that should the Kansas City people find that we had paid the other Parsons they will get dissatisfied and may take down their deeds if we do not pay for them by the first, and the parties here in White Oaks are getting anxious for at least a payment on their \$15,000.00. We can probably arrange with them to make a payment of \$5,000.00 if they put up the deeds for a definite short time and get the matter fixed and pay the \$5,250.00 to take up the

Kansas City deeds. I have written this also to Mr. Sturgeon 405 and Mr. Rice also understands it. I am looking for money next week, so this can be done, and I hope we may receive it. We do not want any slip now on the Kansas City and White Oaks deeds on the other interests on the Hopeful Mine, so if you should be in Chicago next week push this matter so as to secure at least this amount of money. It would be better of course, if we

could pay the whole amount and put the entire Parsons deeds on record so as to put that clear. We will have no trouble and have clear sailing after this is done, but this must be attended to as soon as possible. I have written you thus fully about it that you may understand the situation, and would be glad to hear from you in the matter. I feel very anxious about this, as I know the importance of it, and I know that you and Mr. Rice also realize it. Hope you had a successful trip in Colorado.

Yours truly,

H. B. HAMILTON.

EXHIBIT N. W. H. W.

EL PASO, TEXAS, Sept. 12th, 1902.

Mr. J. S. Tilden, Garrettsville, O.

DEAR MR. TILDEN: I have thought a little strange that I did not hear from you, but I presume you were probably busy or away from home and have not had much time to write. How are things going? I hope you are succeeding with the stock sales so that we may realize money to take up the deeds and carry on the matter down here. There is a matter I would like to write you about, but I guess I will defer it for the present. I presume you straightened out the Parker matter. I have written Mr. Sturgeon calling his attention to 406 the importance of sending out notices for the annual stockholders' meeting to be held in Chicago in October. These written or printed notices should be sent out so they may reach each stockholder in time so that the stockholder may either be present or send his proxy to be voted at the meeting. As president of the company, it would be well for you to look after this matter and see that it is not overlooked. Will you be down this fall? I do not know whether I will go to Chicago to the meeting in October or not. I don't know if it will be necessary for me to be there.

Yours truly,

H. B. HAMILTON.

EXHIBIT O. W. H. W.

EL PASO, TEXAS, 11-26-02.

Confidential.

FRIEND TILDEN: What are you doing and how goes the battle, anyway? Do you know how things are in Chicago? Do you hear of any threatened trouble? I hear here rumors of litigation. Did they fail on the Old Abe payment? From *my view, confidentially*, it would be better to loose the 50,000 paid than to loose more. I think I am not mistaken in this. What is the trouble that money is not raised so as to go ahead and carry out the plans of payment on the mines and erection of the mill on the Hopeful? *Do you know the real cause?* These delays are creating much dissatisfaction and threaten to lead to more serious results—results which threatened us and which we avoided in the Knight and Brooks matter. Has the Brooks matter all been paid? Has any of the company funds been used in the payment? If so, have they been refunded? Did

407 the company make any contract with the Rev. Johnson for the sale of stock? Has the company yet received and sent out the report to stockholders? Don't think I ask too many foolish questions; you know am deeply interested in this matter, not only *personally*, but on account of others, and I do want it to go through and avoid a crash. Had no word from Rice for weeks and nothing satisfactory from Sturgeon, and I write you. Write me what the conditions are and the prospect. You know the nature of our conversations heretofore in many of these matters. Treat this the same way. Could write you much more, but will not now. Am ready and willing to do and help all I can. Write me at once.

Yours,

H. B. HAMILTON.

EXHIBIT P. W. H. W.

EL PASO, TEXAS, December 23, 1902.

Mr. J. S. Tilden, Chicago, Ill.

DEAR TILDEN: I presume you will be in Chicago to meet Mr. Rice and Sturgeon. I have written today to Mr. Sturgeon asking him to have the Board settle my account for services in the past. I have been in the employ of the company since its organization, about one year and a half, and while not constantly employed have done a great deal of work that has been valuable to them. I have stated to Mr. Sturgeon that I thought my work, which I had done, considering the number of trips made to Chicago and elsewhere and the amount of time spent and the important matters which had been adjusted through me, the work ought to be worth five thousand dollars a year, or something like seven thousand five hundred dollars up the first of January. I wish you would take the matter 408 up and have it adjusted on some basis satisfactory and have them send me a check for some money, as I have never had anything since I worked for them, except the allowance made me in October, five hundred of which is all they have paid me. I hope you will attend to the matter and write me, as I am getting in need of money. I hope the matter will be adjusted on a satisfactory basis with Mr. Grant. As I have stated to you before, what you need is to concentrate all you-energies and money on the Hopeful hill. Please let me hear from you.

Yours truly,

H. B. HAMILTON.

EXHIBIT Q. W. H. W.

EL PASO, TEXAS, April 11, 1903.

J. S. Tilden, Garrettsville, Ohio.

DEAR MR. TILDEN: You are perhaps fully advised of the condition of thinks as to the disposition of the Old Abe mine and of the organization of the company who are to take charge of the Old Abe and bond it. While Mr. Sturgeon was here with Mr. Steele, of New York, going over the transaction, I suggested to Mr. Sturgeon that I thought it was important to have the stockholders of the Eagle

Company ratify the action of the Board of Directors of the Eagle Company in the surrender of its option of the Old Abe and allowing the new company to step in and become its purchaser. The Eagle Company, through Mr. Rice, its general manager, acquire an option on the Old Abe. This option, as I understand now, was merely verbal and that no deeds or contracts were made by the Eagle

409 Company to the Old Abe Company for the purchase of the Old Abe. Under this option, which the Eagle Company held,

although verbal, they advertised extensively their purchase of the Old Abe, leaving the inference that they had bought the mine and become its owners, and upon the faith of that they sold a large amount of stock which was paid in on the Old Abe and on other things connected with the company. This would give the stockholders of the Eagle Company an interest in the option on the Old Abe for whatever the option might be worth. And I think the Board of Directors of the Eagle Company, in their surrender of the option on the Old Abe and allowing the new company to buy it, should be sustained by ratification of the stockholders. This would prevent the danger which might arise should any dissatisfied stockholders attempt to make trouble for the Eagle Company and its directors. As you perhaps already know, some of the Eagle stockholders are already becoming very dissatisfied, as is very naturally the case among so many stockholders, and what I am anxious to do is to protect the Eagle Company and its Board of Directors against any successful attack which might be attempted to be made upon them by any dissatisfied stockholders. I think the plan conceived and promoted by Mr. Sturgeon in organizing the subsidiary company to take the Old Abe and bond it and raise the money to pay for the mine and pay back to the Eagle Company the money she has in and to carry on the enterprise, is a very happy solution of the whole difficulty, and upon its success depends the future success of the Eagle Company. And I want if possible to keep the Eagle Company protected from successful attacks. I have written Mr. Sturgeon two letters upon the subject since he went away, and I send you herein a copy of the last letter written him. When you have an opportunity, I think you had better take up the matter and

410 discuss it with him. He can and must appreciate the situation. I wish to say that in view of the fact that some dissatisfaction seems to be growing up among the stockholders of the Eagle Company, it is highly important that the Board of Directors of the Eagle Company keep themselves, if possible, thoroughly protected against any attempted attack. You are and have been treading on very dangerous ground and it is important that you be protected in every way possible. I do not wish you or Mr. Sturgeon to consider that I am anything of an alarmist in these matters, but I know something of the responsibility of the officers and directors of a company to the stockholders and of the legal rights and remedies of stockholders as against a company and its board, and I write you what I do to put you on safe ground, if I can. I think this new plan of Sturgeon's is the way out of the difficulty and the only way to do it is to do it in such way as to give the Eagle Company and its Board of Directors all the legal protection possible. If this matter

can be carried through as now started by Mr. Sturgeon, I think we are on a safe financial basis and we do not want any trouble from any dissatisfied stockholders. You and Mr. Sturgeon are the only two officers of the company to whom I have spoken or written upon this subject, and I do not think it necessary to speak to the others, although I would do so if I had an opportunity; but I feel it important to write to you and him in relation to it. You have a vast number of stockholders scattered all over the country, every one of whom has an interest in the property, money, contracts and options held by the company. And the Board of Directors are simply agents representing the stockholders. Mr. Sturgeon assured me that there would be no difficulty in securing the ratification of the action of the board by the stockholders, and I write you this to impress 411 upon you that I conceive the importance of doing so.

Yours truly,

H. B. HAMILTON.

EXHIBIT R. W. H. W.

EL PASO, TEXAS, August 25, 1902.

Mr. J. S. Tilden, Garrettsville, Ohio.

DEAR SIR: I have not heard from you in relation to your success in closing up the Brooks matter in Chicago. I presume you attended to it, as the time was up on the 23d. I am also anxious to hear from you as to how matters are progressing in Chicago in reference to the sale of stock and the realization of money to move things ahead, and particularly to close up the deeds to the remaining interest of the Hopeful Mine. As stated to you in Chicago, this is important and must be done as soon as possible. In order to meet inquiries and objections raised that the company are not in possession of the full titles to the Hopeful Mine. I impressed this upon you personally so that you, through your company, might give it attention. I will be glad to know how things are going in Chicago. I have not yet heard from Mr. Rice as to whether he is ready to complete first payment of Fifty Thousand Dollars on the Old Abe Mine. I am going up there to night and if he is ready I will look into the title and prepare papers for the transfer. As I told you in Chicago there is a suit pending in the Supreme Court of the United States affecting a quarter interest in the Old Abe Mine. While I do not fear very much the result of the suit, yet it is still pending, as I am satisfied, and 412 hangs over it and of course prevents a perfect title. When I examine into the matter, when we come to the transfer I will write the company making them a report as to the condition of the title. I presume, however, judging from Mr. Rice's course, that as he has contracted for the purchase of the mine, they will not allow the pendency of this suit to stand in the way of their buying, but I think it proper for the company to know its exact status so that they may know what, possibly, to look for.

Yours truly,

H. B. HAMILTON.

This, of course, is for your information.

EXHIBIT S. W. H. W.

EL PASO, July 5, 1902.

Mr. J. S. Tilden, Garrettsville, Ohio.

DEAR MR. TILDEN: Your letter of June 29, in relation to the Gypsum properties, received. I am inclined to think that the matter has probably passed beyond our control. I will, however, inquire, and if it is still open I will advise you. Mr. Rice went to Chicago on Tuesday. Things seem to be moving very well. I went to Kansas City on Monday. Took up the other two deeds for the other owners of the Hopeful Mine; that is, the deed of Mrs. Carpenter and C. C. Parsons. These deeds were made a long time ago and were made by them to me and I paid the money into the bank, taking up their deeds, and I will convey to the company as soon, of course, as the company can pay me the ten thousand dollars which is coming to me, which I hope they will be able soon to do. In the meantime we have the Parsons people cleared up and out of the way, and there

will be no trouble in that direction. Mr. Rice has also made
413 a \$2,000.00 payment upon the Johns interest, held by the

Exchange Bank at White Oaks. This I think will hold that for a little time, until we can make final payment on that. I hope, through the influence and favorable opinion of the parties who have recently visited the mine from South Bend and other places, that the stock will now go right rapidly and give us abundant means to make these payments and carry the matter along. If you have any information as to how things are going up there, would be glad to hear from you. I can come to Chicago most any time that I may be needed, and will probably come certainly at the next meeting of the stockholders, if not before.

Yours truly,

H. B. HAMILTON.

EXHIBIT T. W. H. W.

EL PASO, TEXAS, Nov. 17, 1902.

Mr. J. S. Tilden, Garrettsville, Ohio.

DEAR SIR: I wrote you quite a lengthy letter some days ago, but concluded after writing it not to send it. Mr. S. P. Dickenson has been here from Chicago in the interest of some parties. He spent several days at the mine and came down here to see me. Mr. Dickenson was formerly connected with the American Smelter Company when it operated the smelter at Socorro. He is a fine assayer and metallurgist and came down to examine the mine in the interest of some advertising, as well as some parties in Chicago, who contemplate investing. Seeing that I was connected with the company as attorney, he came to see me; having known me a number of years,

414 he wanted all the information as to the property which I could give him. He inquired especially as to the titles. I gave him a statement with reference to them. Of course I had to tell him that the company only had a title to one-sixth of

the Hopeful, and as to how the remaining five-sixths was held. He seemed well pleased with the property and thinks you have a great undertaking, and I am satisfied will give a favorable account of it. I hope you are getting along well with the sale of the stock and that you may be able to take up the Hopeful and other deeds soon. As I wrote you a few days ago at the request of Mr. Rice, I went to the mine and made up transfers, deeds and papers conveying to the company about one hundred and sixty claims. These did not include the remainder of the Hopeful. Inquiries are coming here quite frequently to me and to others with reference to the property, its titles, etc., and it is highly important, as I have heretofore stated, to you that you close up these Hopeful titles at once, or as soon as possible. I also had a letter from Mr. George wishing to know what to do in reference to increasing the Board of Directors; that is, the course to be adopted under the law, for doing this. I have written him in this matter. There are many things which I mentioned in my other letter which it is not necessary to repeat here. Let me know how you are getting along.

Yours Truly,

H. B. HAMILTON.

EXHIBIT U. W. H. W.

EL PASO, TEXAS, Dec. 10, 1902.

Mr. J. S. Tilden, Garrettsville, Ohio.

DEAR MR. TILDEN: Your letter of December 4th received.
415 I am gratified that the outlook is so encouraging for the Eagle Company in the future. I hope your expectations will be fully realized. I met the expert sent out by the Chicago people, or the Chicago newspaper, and had a pleasant visit with him. He is a man I have known for years and he came down here to see me with reference to the Eagle Mining Company, its titles and its property. I told him the situation. I had several interviews with Mr. Grant at the time, and before he arranged with Mr. Rice to have the ore shipped to Denver, and discussed the advisability with he and Mr. Rice of shipping the ore to Denver, making the test to determine the quality of the ore and the character of treatment required. He is quite a bright man and thoroughly understands his business and if his company undertake the construction of a plant I am sure it will be successful and accomplish the purpose intended. I am glad that the company have settled with old man Parsons and have gotten him out of the way. I am getting anxious to have the balance of the Hopeful matter straightened out. It seems to me the company should not delay this longer. If the company feel they must keep the Old Abe I hope they will succeed in getting the payments made without any difficulty. *Confidentially*, between you and I, I think the company had better lose Fifty Thousand Dollars than to lose One Hundred and Fifty. It would be a long story to go into details and tell you why I make this statement, and to make it now would be useless and perhaps out of place, after the company are determined to buy the mine. I say, though, that this is and has been

from the beginning my impression of this purchase. I would not say this, of course, *to any one outside, or to any one, to any other member of this company at this time.* As my opinion of the ques-

416 tion has never been asked I deem it unnecessary to volunteer it to any one except you. And my relations to you lead me to make the statement to you in the strictest confidence, of course. At some future time when I meet you I may go into detail and give you the reasons for this statement. As you know, there is a suit pending for a quarter of the mine, which of course the company will have to look after if they continue the purchase. I presume as the mine is not yet paid for the Old Abe Company will take care of this litigation; at least assume so. I hope the company are getting money together to take care of its obligations as they mature. I think I shall send in to the company on the first of January my account for my services up to that time. I have spent considerable time with the company, as you know, closed my office and neglected my business, to make several trips to Chicago; spent a good deal of time there in looking over the troubles with the Knight and Brooks matter, which fortunately we succeeded in adjusting upon a basis, I think, which is going to result in a large benefit to yourself and others who have acquired these interests and have saved the company from wreck and I think destruction. I will send in my bill I think in January and asked to have it allowed and paid. I am also contemplating tendering my resignation to the company as its attorney, owing to the condition of my own business matters, and my desire to get this matter straightened up between myself and the company. I simply make this suggestion to you. I have not yet disclosed such intended course to the company or Mr. Rice, which I think I shall do. Of course if I withdraw as attorney for the company I would want my account with the company closed and also want them to take up and pay me for the Hopeful deeds to the half interest in the mine which I hold. There are many things which I would like to discuss with you could I see you, but I

417 do not care to write them now. If you have any meeting in Chicago in January, or along about that time, and you think it important for me to go to Chicago, I will do so. I throw out these considerations to you and you can consider them and write me. Any information or help I can give you or the company, either now or at any future time, I am willing to do so, either here or in Chicago or elsewhere. This course on my part is not prompted by any dissatisfaction with my relations with the company or its officers. These have always been very pleasant and agreeable. But is is owing to my own business partially, and partially by my desire to get the Hopeful matter settled up. I know of nothing now that is likely to give the company any immediate trouble in the way of litigation, and hope nothing of the kind will arise. Hope you may get the Brooks matter closed up. Don't neglect that stock matter in the Brooks business.

Yours truly,

H. B. HAMILTON.

EXHIBIT V. W. H. W.

EL PASO, TEXAS, Dec. 20, 1902.

Mr. J. S. Tilden, Garrettsville, Ohio.

DEAR TILDEN: Mr. Grant, of the Colorado Iron Works, has been up to the mine several days, going over the matter with Mr. Rice, and is here now. I have spoken to him, going over the matter relative to the Hopeful proposition and to the construction of the plant thereon. He thinks you have a wonderful proposition and one which will pay for the construction of a thousand ton mill. He thinks, however, of course, that as the company will not be able to construct so large a stamp mill at the start that it will be advisable to 418 begin the matter in a smaller way and construct the plant probably of a hundred tons or more capacity and increase it from thereon. We have gone over the whole matter very fully and he is positive as to the outcome of the matter, if the company can get it started. There is some talk of a meeting in Chicago in January of the stockholders, or a large portion of them, to take up the matter of constructing the mill. Mr. Sturgeon is now at the mine with Mr. Rice, with some gentlemen from Chicago. Mr. Sturgeon wrote me that he would expect to see me while he was here. I have written him to Parsons and White Oaks asking him to wire me when he would meet me. I am very anxious to go over some matters connected with the business with Mr. Sturgeon and Mr. Rice, and if he will let me know I will either meet him at White Oaks or at Parsons. They will probably go to Denver sometime about the first or immediately after the first, then, I understand, to Chicago. If it is necessary or advisable for me to be at Chicago at any meeting or gathering of the stockholders or directors in January, I can go. I still have in view what I wrote you in my last letter, as I am anxious to get the matter of the Hopeful titles cleaned up and get the matter between myself and the company closed. It is becoming more important all the time to do this. I would like to hear from you.

Very truly yours,

H. B. HAMILTON.

Diet. K.

419 TERRITORY OF NEW MEXICO,
County of Lincoln, ss:

In the District Court of the Sixth Judicial District.

No. 1539.

HUMPHREY B. HAMILTON, JR., as Administrator of the Estate of Humphrey B. Hamilton, Deceased; Mary R. Hamilton, Humphrey B. Hamilton, Fenwick Hamilton, and Lulu Driscoll, Plaintiffs,

vs.

THE EAGLE MINING & IMPROVEMENT COMPANY, Defendant.

To the Clerk of the said District Court and to the Hon. G. W. Prichard, Santa Fe, attorney for the defendant in the above entitled cause:

Please take notice that on the twentieth day of May, A. D. 1905, I will apply to the Clerk of said Court at his office in Alamogordo for a commission to be directed to J. M. Peacock, a notary public within and for the County of Chaves, Territory of New Mexico, whose post office address and street number of place of business is 112 West Second Street, Roswell, New Mexico, and within the county and territory aforesaid, to take the answers of the following named witnesses, to-wit: Ira P. Wetmore, residing and to be found at Roswell, in the said County of Chaves, Territory of New Mexico, to the interrogatories attached to this notice. The deposition of said witness is to be taken on behalf of the plaintiffs in the above entitled cause, and to be used by and on behalf of the same parties as defendants in the case of the Eagle Mining & Improvement Company vs. Mary R. Hamilton et al., Case No. 1444 on the Civil Docket of said Lincoln County, in compliance with the order heretofore made consolidating the said causes.

JAMES G. FITCH,
*Socorro, N. M., Attorney for
Humphrey B. Hamilton, Jr., et al.*

Socorro, New Mexico, May 10, 1905.

420 (NOTE.—The interrogatories and cross-interrogatories filed and sent to the Commissioner each having been repeated by the Commissioner at the time of taking the witness's answers, the said interrogatories and cross interrogatories are, under instructions from defendant's attorney, omitted, thus saving repetition. C. P. Downs, Clerk.)

The Territory of New Mexico to J. M. Peacock, Notary Public, Roswell, New Mexico, Greeting:

You are hereby authorized and empowered to cause to come before you Ira P. Wetmore resident of Roswell in the County of Chaves and Territory of New Mexico at such time and place as you may

think most convenient and expeditious, and the said Ira P. Wetmore being first sworn to depose the truth, his answers to take the accompanying interrogatories and cross interrogatories propounded to the said Ira P. Wetmore in a certain cause now pending in the Sixth Judicial District Court of the Territory of New Mexico within and for the County of Lincoln, wherein H. B. Hamilton, Jr., et al. are Plaintiffs, and The Eagle Mining & Improvement Company is Defendant; and having reduced the said answers to writing, you will cause the said witness to sign the same, to which you will certify officially; and you will also sign and certify the said answers officially; after which you will envelope and seal said answers, interrogatories and cross interrogatories, together with this commission, in a package directed to the Clerk of the District Court aforesaid, conforming in all respects to the requirements of the statute in such cases made and provided.

Witness the Hon. Edward A. Mann, Associate Justice of the Supreme Court of said Territory and Judge of the Sixth Judicial District Court thereof, and the seal of said District Court this 20th day of May A. D. 1905.

[SEAL.]

D. J. LEAHY, *Clerk.*
By C. P. DOWNS, *Deputy.*

421 In the District Court of the Sixth Judicial District of the Territory of New Mexico, Sitting within and for the County of Lincoln, for the Trial of Causes Arising under the Laws of the said Territory.

No. 1539.

HUMPHREY B. HAMILTON, JR., as Administrator of the Estate of Humphrey B. Hamilton, Deceased; Mary R. Hamilton, Humphrey B. Hamilton, Jr., Fenwick Hamilton, and Lulu Driscoll, Plaintiffs,

vs.

THE EAGLE MINING & IMPROVEMENT COMPANY, Defendant.

Depositions of Ira P. Wetmore, of Roswell, New Mexico, to be used in the above entitled cause, taken before J. M. Peacock, Notary Public within and for the County of Chaves, Territory of New Mexico, at Roswell, in the County of Chaves, Territory of New Mexico, on the 23th day of May, 1905, in accordance with the accompanying commission.

IRA P. WETMORE, a witness produced, sworn and examined on behalf of the plaintiffs, in the above entitled cause, in response to the Interrogatories and Cross-interrogatories propounded to him, deposed as follows:

Direct Interrogatory No. 1. Please state your name age, place of residence and occupation.

Answer. My name is Ira P. Wetmore; I am 60 years old; I reside at Roswell, New Mexico, and I am an attorney at Law and abstractor by occupation.

422 Direct Interrogatory No. 2. State whether or not you were acquainted with the late Judge Humphrey B. Hamilton in his lifetime.

Answer. I was during the last five years of his life.

Direct Interrogatory No. 3. Please state whether or not you are acquainted with Humphrey B. Hamilton, Junior, and the other plaintiffs in this cause; whether you are connected or related in any way to any of these plaintiffs, and if so, how related or connected.

Answer. I am personally acquainted with Humphrey B. Hamilton, Junior, Fenwick Hamilton and Lulu Driscoll, only. Humphrey B. Hamilton, Jr., is my son-in-law.

Direct Interrogatory No. 4. Do you know, or have you ever met, one J. M. Rice, of Parsons, New Mexico?

Answer. I met J. M. Rice, of Parsons, New Mexico, once during the latter part of July, 1903, only.

Direct Interrogatory No. 5. In answer to the above Interrogatory you state that you do know or have met him, then please state whether you know anything as to his connection with the defendant, The Eagle Mining and Improvement Company.

Answer. I know the official records of Lincoln County, New Mexico, show that J. M. Rice, of Parsons, New Mexico, was the designated local agent of The Eagle Mining and Improvement Company in July, 1903, and that he so stated that he was the manager in charge of said company when I met him in Lincoln, New Mexico, at that time.

Direct Interrogatory No. 6. If in answer to the last interrogatory you state that you do know, then please state what his connection with the Eagle Mining and Improvement Company was, or what position he occupied with reference to said Company.

423 Answer. My last question covers this question fully.

Direct Interrogatory No. 7. Please state whether or not you were ever present at, or took part in, any conversation with the said J. M. Rice in reference to any transactions between the late Judge Hamilton and the Eagle Mining and Improvement Company.

Answer. I met said J. M. Rice in the office of Humphrey B. Hamilton, Jr., in Lincoln, New Mexico, during the latter part of July, 1903, at which time the connection of Judge Hamilton with the Eagle Mining and Improvement Company and Judge Hamilton's title to the Parsons mine was being considered between Humphrey B. Hamilton, Jr., and Mr. J. M. Rice, in which I took some part.

Direct Interrogatory No. 8. If you state that you were present at, or took any part in any such conversation, please state when and where that conversation took place; whether anybody else was present besides yourself and Mr. Rice, and if anybody else was present, who?

Answer. It was in the office of Humphrey B. Hamilton, Jr., in Lincoln, New Mexico, and there were present said Humphrey B. Hamilton, Jr., J. M. Rice and myself, and part of the time a doctor from the mines, whose name I cannot now recall, who came over with Mr. Rice.

Direct Interrogatory No. 9. Please state, if you know, who Mr.

Rice represented, or in what capacity he was acting, in taking part in that conversation.

Answer. Mr. Rice came to Lincoln, New Mexico, by a previous arrangement between him and Humphrey B. Hamilton, Jr., to make some arrangement, as he said, in the interest of the company about the deed which Judge Humphrey B. Hamilton and his wife had executed, conveying their interest in the Parsons Mine 424 to the Eagle Mining Company long prior to his death, and which had been placed in escrow in the bank at El Paso, Texas, and that he was soon going to Chicago, Illinois, to the general office of the said company that he might take the matter up at their annual meeting.

Direct Interrogatory No. 10. Please state fully just what was said by Mr. Rice in that conversation, giving his language as nearly as you can?

Answer. Mr. Rice claimed that he had full charge of the said company's business here and that he knew all about the work of Judge Hamilton for the company; that the company had been doing its best to take up the said deed; that the consideration of said deed was fifteen thousand dollars, but intimated that only about ten thousand was going to the judge; that his check books would show when he had given him (Judge Hamilton) some five thousand dollars to pay for said property, and that Judge Hamilton only held it in trust for the company, and that the ten thousand dollars was to pay him for his services. When Mr. Rice was asked how it came that the head office in Chicago wrote Judge Hamilton in answer to the judge's demanding that the company take up this deed in escrow or he would look elsewhere for a buyer, in which reply they begged him not to do so but to stay with the company, thereby recognizing his right and claim to the property, Mr. Rice answered that he knew more about this business than anybody else did, and did not think the company ever wrote such a letter; that if the annual election was all right, they would be able to pay all their obligations and do business. And when Mr. Rice was asked if Judge Hamilton had ever been paid for his services for some two years, he said he did not know, but thought not.

Direct Interrogatory No. 11. Please state what if anything, said by Humphrey B. Hamilton, Jr., and what reply, if any, was made by Mr. Rice.

425 Answer. My answer to Interrogatory No. 10 covers this Interrogatory also.

Direct Interrogatory No. 12. Please state what, if anything, was said by you in the course of that conversation, and what reply, if any, was made by Mr. Rice.

Answer. My answer to this would be the same as the answer to Interrogatory No. 10, as I cannot say as to which one of us asked the questions.

Direct Interrogatory No. 13. Do you know, or can you set forth any other matter or thing material to this subject of your examination, or of benefit or advantage to the parties in this suit, or either of them? If so, please state the same fully and at large in your answer.

Answer. I do not think of anything further to offer.

Cross-interrogatories:

Cross-interrogatory No. 1. If you are related to H. B. Hamilton, Jr., you may state what that relationship is.

Answer. Humphrey B. Hamilton, Jr., is my son-in-law.

Cross-interrogatory No. 2. Did J. M. Rice say to H. B. Hamilton, Jr., that he came to the latter's office to talk over matter in connection with the deeds that Judge Hamilton held for certain interests in the Hopeful Mine and Millsite which had been acquired from C. C. Parsons and Agnes Carpenter at Rice's request?

Answer. He stated he came to see what arrangement could be made about the deed made by Judge Hamilton and his wife to the company, he having died before the delivery of the same, leaving a minor heir. There was nothing said about the deeds he (Hamilton) held the property under.

Cross-interrogatory No. 3. Did Mr. Rice explain to H. B. 426 Hamilton, Jr., his agreement with Judge Hamilton, and for whom the deeds from C. C. Parsons and Agnes Carpenter were secured?

Answer. He did not. I was present during the entire meeting. He admitted that the company was to pay Judge Hamilton fifteen thousand dollars for the deed to the property, as stated in the memoranda on the envelope with the deed as placed in escrow, when asked upon that point; but intimated that only about ten thousand dollars of that sum went to the Judge, he having furnished, as his check books would show, about five thousand dollars to buy the property. When I suggested that this was then a case of a wheel within a wheel, Mr. Rice made no reply further than that he knew more about the company's business than any one else did.

Cross-interrogatory No. 4. Who did Mr. Rice say furnished the money to pay for the deeds from C. C. Parsons and Agnes Carpenter?

Answer. As stated in my last answer, that (Rice) furnished about five thousand dollars to the Judge to buy the property, as his check books would show.

Cross-interrogatory No. 5. Did not Mr. Rice say in that connection that it was agreed between Judge Hamilton and himself that the titles called for by the deeds were to be transferred to the Eagle Mining and Improvement Company by Judge Hamilton at any time that the company might request the transfer?

Answer. No. Along towards the last of our interview at Lincoln, Mr. Rice claimed that Judge Hamilton held this property in fact in trust for the company; but he never denied or claimed that the company was to have the deed to it without paying the fifteen thousand dollars.

Cross-interrogatory No. 6. Did not Mr. Rice in that conversation say that Judge Hamilton had advanced no money of his own 427 for the titles from C. C. Parsons and Agnes Carpenter, but that the money was advanced by the Eagle Mining and Improvement Company?

Answer. No; but that he (Rice) had furnished Judge Hamilton about five thousand dollars to buy said property, as his check books would show.

Cross-interrogatory No. 7. Did not Mr. Rice also say that for securing the deeds of C. C. Parsons and Agnes Carpenter and for doing all the legal business of the company, which included the securing of patents to various mining claims and taking care of any suits that the company might become interested in, that the agreement was that Judge Hamilton was to receive the difference between fifteen thousand dollars and what the interest of C. C. Parsons and Agnes Carpenter would cost, and that this difference was to be paid Judge Hamilton for the above mentioned services?

Answer. No. Mr. Rice did not know anything about Judge Hamilton's fee, only that he had not been paid, so far as he knew, for nearly two years' services.

Cross-interrogatory No. 8. Did not Mr. Rice in that conversation also say that the company furnished Judge Hamilton \$5,000.00 to pay for the deeds from C. C. Parsons and Agnes Carpenter?

Answer. No; that he (Rice) furnished about five thousand dollars, as heretofore stated.

Cross-interrogatory No. 9. Did not Mr. Rice also say in that conversation that Judge Hamilton never rendered any services for the company outside of the agreement above referred to?

Answer. No; he admitted that Judge Hamilton had attended to all of the company's legal business.

Cross-interrogatory No. 10. Did he not also say in that conversation that some of the services that were to have been rendered by Judge Hamilton were in fact never rendered under said agreement?

428 Answer. No; neither directly nor indirectly.

Cross-interrogatory No. 11. Did not Mr. Rice in that conversation say that he was the manager of the Eagle Mining and Improvement Company and that no one had authority to contract debts on the account of the company in New Mexico except himself?

Answer. Yes; I so understood him.

IRA P. WETMORE.

I, J. M. Peacock, Notary Public within and for the County of Chaves, in the Territory of New Mexico, do hereby certify that Ira P. Wetmore, the witness before named, to me personally known, having been first sworn to depose to the truth, made the foregoing answers before me and signed the same in my presence.

Given under my hand and official seal this the 26th day of May, A. D. 1905.

[SEAL.]

J. M. PEACOCK,
Notary Public.

Commissioner's fee, \$6.00.

On September 20, 1906, there was filed in the office of the Clerk of the above named Court by the attorney for the Eagle Mining & Improvement Company, a praecipe, which said praecipe is in words and figures following, to-wit:

In the District Court of the Sixth Judicial District of the Territory of New Mexico within and for the County of Lincoln.

No. 1444.

THE EAGLE MINING & IMPROVEMENT COMPANY, Plaintiff,
versus
MARY R. HAMILTON et al., Defendants.

No. 1539.

HUMPHREY B. HAMILTON, JR., Adm'r, et al., Plaintiffs,
versus
THE EAGLE MINING & IMPROVEMENT COMPANY, Defendants.

429

Præcipe.

The above named The Eagle Mining & Improvement Company desiring to have reviewed the final judgment herein on an appeal of the above causes, consolidated, to the Supreme Court of said Territory, the Clerk of the said District Court will prepare and certify the following transcript of the record and proceedings in said causes, to-wit:

1. The complaint, answer and reply in Cause No. 1444.
2. Order of reference.
3. Examiner G. B. Barber's report.
4. Opinion of the Court.
5. Exceptions to Examiner's report by the Eagle Mining & Improvement Company.
6. Exceptions to Examiner's report by Hamilton heirs.
7. Motion for rehearing by The Eagle Mining & Improvement Company.
8. Order overruling motion for rehearing and new trial.
9. Final decree of Court.
10. Complaint, amended answer and reply in Cause No. 1539.
11. Report of the referee, together with the testimony of the witnesses in the order in which such testimony was taken, in both cases.
12. Exhibits referred to in the testimony and offered as proof in the order as introduced before the referee.
13. One copy of the Articles of Incorporation.
14. Section 7 of the By-Laws of the said The Eagle Mining & Improvement Company.

G. W. PRICHARD,

Attorney for the Eagle Mining & Improvement Co.

430 Endorsed: Nos. 1444 & 1539. District Court, Lincoln County. Eagle Mining & Improvement Co. v. Mary Hamilton et al. H. B. Hamilton, Jr., Adm'r et al. v. Eagle Mining & Improvement Co. *Præcipe for Transcript.* Filed Sep. 20, 1906. Chas. P. Downs, Clerk.

In the District Court of the Sixth Judicial District of the Territory of New Mexico within and for the County of Lincoln.

No. 1444.

THE EAGLE MINING & IMPROVEMENT COMPANY, Plaintiff,
versus
MARY R. HAMILTON et al., Defendants.

No. 1539.

HUMPHREY B. HAMILTON, Jr., Adm'r, et al., Plaintiffs,
versus
THE EAGLE MINING & IMPROVEMENT COMPANY, Defendant.

And for as much as the matters above set forth do not appear of record, the plaintiff in the above numbered cause, to wit, No. 1444, and the defendant in the above numbered cause, to wit, No. 1539, tenders this its Bill of Exceptions, and prays that the same may be signed and sealed by the Judge of this Court, pursuant to the statute in such case made, which is accordingly done this 17th day of November, A. D. 1906.

EDWARD A. MANN, *Judge.*

TERRITORY OF NEW MEXICO,
Sixth Judicial District, County of Lincoln:

I, the undersigned, Clerk of the District Court of the Sixth Judicial District of the Territory of New Mexico, within and for the County of Lincoln, do hereby certify that the foregoing is a 431 true, complete and correct transcript of the proceedings and pleadings in the above designated causes, including bill of exceptions, as called for by the preceipe of the attorney for the said appellant The Eagle Mining & Improvement Company, as the same remain of record and on file in my office.

Witness my hand and the seal of the said District Court at my office in Alamogordo, New Mexico, this seventeenth day of November, A. D. 1906.

[SEAL.]

CHAS. P. DOWNS.

To Mary R. Hamilton et al. and H. B. Hamilton, Jr., Adm'r et al.
Greeting:

You are hereby notified that in the two cases lately pending in our District Court for the Sixth Judicial District of the Territory of New Mexico, within and for the County of Lincoln, wherein in said cause numbered 1444 The Eagle Mining & Improvement Company was plaintiff and Mary R. Hamilton et al. were defendants, and said cause numbered 1539 Humphrey B. Hamilton Jr., Adm'r et al.

were plaintiffs and The Eagle Mining & Improvement Company was defendant, the said plaintiff in No. 1444 and defendant in No. 1539 have sued out an appeal to the Supreme Court of the Territory of New Mexico from the judgment of our said District Court; and you are hereby cited to appear in our said Supreme Court within ninety days from the first day of November, A. D. 1906, then and there to answer said appeal.

Witness the Honorable Edward A. Mann, Associate Justice of the Supreme Court of the Territory of New Mexico and Judge of the Sixth Judicial District Court thereof, and the seal of said Court, this 13th day of November, A. D. 1906.

[SEAL.]

CHAS. P. DOWNS, *Clerk.*

433 And Afterwards, on to wit, on the nineteenth day of November, A. D., 1906, there was filed in the office of the said Clerk of the Supreme Court of the Territory of New Mexico, an assignment of error in the above entitled causes, which said assignment of errors was and is in words & Figures, following towit:

In the Supreme Court of the Territory of New Mexico, January Term, A. D., 1907.

No. 1177.

EAGLE MINING & IMPROVEMENT COMPANY, Appellant,
vs.

MARY R. HAMILTON et al., Appellees.

Appeal from District Court, Lincoln County.

No. 1178.

H. B. HAMILTON, JR., Adm., etc., et al., Appellees,
vs.

EAGLE MINING & IMPROVEMENT COMPANY, Appellant.

Appeal from District Court, Lincoln County.

Assignment of Errors by Appellant.

Comes now the said Eagle Mining and Improvement Company, appellant herein, and shows to the court that in the record, proceedings and decree of the District Court in the above entitled cause, there are manifest errors to the prejudice of this appellant, towit:

First. The court erred in holding that H. B. Hamilton was the trustee of an expressed trust.

Second. The court erred in finding that the said Hamilton was entitled to \$5,000 a year as the attorney of appellant.

Third. The court erred in virtually holding that J. M. Rice was an incompetent witness in behalf of appellant.

Fourth. The court erred in holding that the said Rice as General

Manager of the Eagle Mining and Improvement Company had no authority to make a contract with, and employ an attorney for said company.

434 Fifth. The court erred in holding that said Rice had no such authority under the by-laws of said company.

Sixth. The court erred in holding that the company and its officers recognized and approved the claims of the said Hamilton to an interest in the Hopeful mine, or that he was entitled to attorney's fees independent of his contract with said General Manager.

Seventh. The Court erred in holding that the letters of the Treasurer and President of the Eagle Mining and Improvement Company attached any liability of said company to the said Hamilton.

Eighth. The court erred in holding that the said Hamilton held an interest in the Hopeful mine as security for \$9,500.00.

Ninth. The court erred in rejecting certain set-offs of said company against the said Hamilton.

Tenth. The court erred in receiving and considering as testimony the self-serving declarations of the said Hamilton as binding upon the appellant.

Eleventh. The court erred in many and divers other respects apparent upon the record:

Wherefore, the said appellant prays that said record may be seen and examined by this Honorable Court, that the errors of said District Court may be corrected, its judgment annulled, and for such other relief in the premises as appellant may be entitled to.

GEORGE W. PRICHARD,
Attorney for Appellant.

Which said assignment of errors was endorsed as follows: No. 1177. In the Supreme Court of the Territory of New Mexico, January Term 1907—Eagle Mining & Improvement Company, Appellant, vs. Mary R. Hamilton et al., appellees H. B. Hamilton Adm. etc. et al. appellees vs. Eagle Mining & Improvement Co., appellant—Assignment of errors by appellant.—Filed in my office this Nov. 19, 1906, Jose D. Sena, Clerk—Geo. W. Prichard, Santa Fe, N. M. Attorney for appellant.

435 And Afterwards, on to wit, on the fifteenth day of January, A. D., 1907, there was filed in the office of the clerk of the Supreme Court a suggestion of Diminution of Record and Motion in the above entitled causes which said suggestion for diminution of the record and motion was and is in words and figures following to wit:

In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1907.

No. 1177.

EAGLE MINING & IMPROVEMENT COMPANY, Appellant,
vs.

MARY R. HAMILTON et al., Appellees.

EAGLE MINING & IMPROVEMENT COMPANY, Appellant.

Appeal from District Court, Lincoln County.

No. 1178.

H. B. HAMILTON, JR., Administrator of the Estate of H. B. Hamilton, Deceased; MARY R. HAMILTON et al., Appellees,
vs.

EAGLE MINING & IMPROVEMENT COMPANY, Appellant.

Appeal from District Court, Lincoln County.

Comes now the appellees, H. B. Hamilton, Jr., Administrator, et al. and Mary R. Hamilton, et al. by James G. Fitch, their Attorney and suggest a diminution of the record in the following particular to wit: the omission of the record of the proceedings and of a certain judgment rendered in the District Court, within and for the county of Lincoln, on, to-wit; the twenty-eighth day of February, A. D. 1900, in a case then pending in said court, entitled, "The Territory of New Mexico, against the persons, real-estate land and property described in the delinquent tax list of the County of Lincoln, for the years 1897 and 1898," record of which said proceedings and judgment was introduced in evidence before the lower court

436 in rebuttal by the appellees herein, for the purpose of showing that two of the tax deeds offered in evidence by appellant.

to-wit, "Exhibits F. and H." were for taxes levied and assessed against other interest in the Hopeful Mines, than those purchased and acquired in the name of the said H. B. Hamilton, deceased, and that said Tax deeds in no wise related to or affected the one-half interest so acquired in the name of said H. B. Hamilton, and for the further purpose of showing that the other tax deeds "Exhibit G" offered in evidence by said appellant was based upon an assignment for taxes for the year 1897 on said Hopeful Mine against the estate of R. C. Parsons, and not against the actual owners of said mining claim at said date and was void for that reason.

Wherefore, said appellees move the court for a writ of certiorari, directed to the Clerk of the District Court of the Sixth Judicial District of the Territory of New Mexico, requiring him to properly certify to and forward to the Clerk of this Court, the record of said

proceedings and judgment, or for such other action on the part of this court as appellees may be entitled to in the premises.

438 I

JAMES G. FITCH,
Socorro, N. M., Attorney for Appellees.

TERRITORY OF NEW MEXICO,
County of Socorro, ss:

James G. Fitch, being first duly sworn, on his oath states that he is the attorney for the appellees in the above entitled cause, that the facts stated in the above motion in regard to the introduction in evidence by appellees of the record of the judgment in said tax suit, and the purpose for which the record of said judgment was introduced are true.

Affiant further states that the attorney for appellant never served or caused to be served upon this affiant, any notice of intention to present for allowance any bill of exceptions or any proposed record, or parts of record, in the above entitled cause, or any notice of any preeipe directed to the clerk of the said District Court to prepare and certify transcript of the record of the proceedings in this case, and that this affiant had no knowledge whatever of any such preeipe, bill of exceptions, or proposed record, until the eleventh day of the present Month, when he, for the first time, obtained from the attorney for appellant, a copy of the printed transcript of record, together with a copy of appellant's brief herein, and did not discover the omission of the record of said judgment from said record until the following say, and that because of these reasons this motion was not sooner presented to this Court.

E

JAMES G. FITCH.

Subscribed and sworn to before me this 14th day of January
A. D. 1907.

[SEAL.]

ANTON MAYER,
Notary Public, Socorro County, New Mexico.

Which said suggestion of diminution of record and motion was endorsed as follows "No. 1178—Territory of New Mexico, Supreme Court—Eagle Mining & Improvement Company Appellant vs. Mary R. Hamilton & H. B. Hamilton Jr., et als. Appellees,—Suggestion of Diminution of Record, and Motion—Filed in my office this Jan. 15, 1907, Jose D. Sena, Clerk. James G. Fitch, Socorro, N. M. Attorney for appellees."

And afterwards, on to wit: On the 17th day of January, A. D. 1908, there was filed in the office of the said Clerk of the Supreme Court of the Territory of New Mexico, a stipulation in the above entitled causes which said stipulation was and is in words and figures, following to wit:—

In the Supreme Court of the Territory of New Mexico,
January Term, A. D. 1908.

No. 1177.

EAGLE MINING & IMPROVEMENT COMPANY, Appellant,
vs.

MARY R. HAMILTON et al., Appellees.

Appeal from District Court, Lincoln County.

No. 1178.

H. B. HAMILTON, JR., Adm., etc., et al., Appellees,
vs.

EAGLE MINING & IMPROVEMENT COMPANY, Appellant.

Appeal from District Court, Lincoln County.

It is hereby stipulated by and between the attorneys for the appellant and for the appellees in this case that the said appellees produced the following evidence in rebuttal before the trial Judge, which evidence was omitted from the transcript of the record through oversight, to wit:—

The proceedings and judgment of the District Court within and the county of Lincoln, rendered on the 28th day of February, 1900 in a case then pending in said District Court, entitled the Territory of New Mexico against the Persons Real Estate Land and property described in the Delinquent tax list of the County of Lincoln for the years 1897 and 1898, in and by which judgment is shown, among other things that judgment was rendered as follows: Against the Hopeful Mine and Mill site, surveys 652 A and 652 B assessed against the estate of R. C. Parsons for the taxes of 1897, in the sum of \$270.89 interest \$84.65 costs 70 ets. total \$356.24. Against 5/6 interest in Hopeful mine assessed against T. C. Jones, for the taxes for the year 1898 amounting to \$217.18 interest \$3.57, costs 35 ets. total \$236.52.

Against the 1/6 in the Hopeful Lode, assessed against E. S. Parsons for the taxes of 1898 in the sum of \$43.23, interest \$2.70 costs 70 ets., total \$47.70.

It is further stipulated that the said judgment is the same judgment referred to in appellant's Exhibit- "F" and "H." It is further stipulated, with the consent of this court, that the facts hereinabove mentioned are to be considered by this court in the same manner and to the same extent as if the transcript of the record of said judgment had been duly certified to this court by the Clerk of the District Court with the other evidence in this case.

GEO. W. PRICHARD,
Attorney for Appellant.

JAMES G. FITCH,
Attorney for Appellees.

Which said stipulation was and is endorsed as follows to wit: "No. 1177-8—Eagle Mining & Improvement Co., appellant vs. Mary R. Hamilton et al., Appellees,—Stipulation—Filed in my office this Jan. 17, 1907, Jose D. Sena, Clerk."

And afterwards, on to wit, at a regular term of the Supreme Court of the Territory of New Mexico, begun and held at Santa Fe the seat of Government on the first Wednesday after the first Monday in January, the same being the 9th day of January, A. D., 1907 on the seventh day of the said Regular term the same being the 17th day of January, the following among other proceedings were had and entered of record, to wit:—

No. 1177.

EAGLE MINING & IMPROVEMENT COMPANY, Appellant,
vs.
MARY R. HAMILTON et al., Appellees.

Appeal from District Court, Lincoln County.

440

No. 1178.

H. B. HAMILTON, JR., Adm., etc., et al., Appellant,
vs.
EAGLE MINING & IMPROVEMENT COMPANY, Appellees.

Appeal from District Court, Lincoln County.

This cause- coming on upon a motion for diminution of the record, and the parties hereto having this day stipulated the matters for which a diminution was prayed. It is therefore, considered and adjudged by the court that the motion for a diminution of the record herein be and the same hereby overrules, the motion for diminution and will consider as part of the record the matters contained in the stipulation this day filed.

And this cause- coming on for hearing upon the transcript of record, assignment of errors and briefs of counsel, are argued by George W. Prichard, Esq., for appellant, and H. G. Fitch, Esq., for Appellees, and submitted to the court, and the court not being sufficiently advised in the premises takes the same under advisement.

And afterwards on to wit, on the fifteenth day of the said Regular term, the same being Wednesday the 28th day of August, A. D. 1907, the following among other proceedings were had and entered of record, following to wit:

No. 1177.

EAGLE MINING & IMPROVEMENT COMPANY, Appellant,
vs.

MARY R. HAMILTON et al., Appellees.

Appeal from District Court, Lincoln County.

No. 1178.

H. B. HAMILTON, JR., etc., et al., Appellees,
vs.

EAGLE MINING & IMPROVEMENT COMPANY, Appellant.

Appeal from District Court, Lincoln County.

441 This causes having been argued by counsel, and submitted to a and taken under advisement by the court upon a former day of the present term, and being now sufficiently advised in the premises announces its decision by Associate Justice Ira A. Abbott, Chief Justice W. J. Mills, and Associate Justices Parker, Pope and McFie, concurring, affirming the judgment of the court below, for reasons stated in the opinion of the court on file: It is therefore considered and adjudged by the court that the judgment of the District Court in and for the county of Lincoln, whence this cause came into this court, be and the same hereby is affirmed, and that in accordance therewith it is considered and adjudged by the court that Humphrey B. Hamilton, Jr., as administrator of the estate of Humphrey B. Hamilton deceased do have and recover of and from the Eagle Mining & Improvement Company the sum of Eleven Thousand Eight Hundred and Sixty two and 33/100 Dollars with interest thereon at the rate of six per cent per annum from the 24th day of August, A. D. 1903, until paid, together with all costs of suit, within three months from this date, and that concurrently with the payment to said Mary R. Hamilton, Humphrey B. Hamilton, Jr., Fenwick Hamilton and Lulu Driscoll, as the heirs of the said Humphrey B. Hamilton, deceased, do execute and deliver to the Eagle Mining and Improvement Company a good and sufficient deed of conveyance for the said undivided one half interest in and to the Hopeful Lode Mining Claim and Mill site, being designated by Mineral Certificate No. 365, and by Surveyor General as Lots 652A and 652B embracing a portion of township ten South, of Range eleven of the New Mexico Meridian, said mining claim and mill site being the same property patented by Government of the United States to R. C. Parsons; by patent issued August 3rd, 1892, and recorded in Book "D" page 522 of the records of the Probate Clerk and ex-Officio Recorder of the County of Lincoln.

It is further ordered, adjudged and decreed that upon default of said payment by said Company, within the period of three 442 months from and after this date, the said undivided one half interest in and to the Hopeful Lode Mining Claim and Mill Site be sold by A. H. Hudspeth, Esquire, who is hereby appointed Master in Chancery for that purpose, at Public Auction to the highest bidder at the front door of the Lincoln County Court House; that

said Master give previous notice of the time and place of said sale by advertisement, for not less than four weeks, in some paper published within the said County of Lincoln; that out of the proceeds of said sale said Master pay, first, all of the costs of these suits, together with the costs of advertisement and sale, and then pay to the said Humphrey B. Hamilton, Junior, as administrator, the said sum of Eleven Thousand Eight Hundred and sixty two and 33/100 Dollars, with six per cent interest thereon from the 22nd of August, 1906, until the day of sale, or so much thereof as can be paid of the proceeds of said sale, that he bring the surplus, if any, into Court, or in case of deficiency, that he report the amount of said deficiency to the Court.

It is further ordered, that the said Master be allowed the same fees and commission as are allowed by law to Sheriffs on the sale of real estate under execution at law; that said Master make his report to the Court with all convenient speed, and execute a good and sufficient deed of conveyance to the purchaser at such sale, when approved and confirmed by the court.

It is also considered by the court that the said Humphrey B. Hamilton, Junior, as administrator do have and recover of and from the Eagle Mining & Improvement Company the sum of Eight Thousand Four Hundred and nineteen and 99/100 Dollars, together with costs herein to be taxed and that execution issue therefor.

And afterwards on to wit, *on* the 29th day of August, A. D. 1907, there was filed in the office of the clerk of the Supreme Court of the said Territory a motion for rehearing in the above entitled causes, which said motion for rehearing was and is in words and figures following towit:

443 In the Supreme Court of the Territory of New Mexico,
January Term, A. D. 1907.

No. 1177.

EAGLE MINING & IMPROVEMENT COMPANY, Appellant,
vs.
MARY R. HAMILTON et als., Appellees.

Appeal from District Court, Lincoln County.

No. 1178.

H. B. HAMILTON, JR., Adm. of the Estate of H. B. Hamilton, Deceased; MARY R. HAMILTON, et als., Appellees,
vs.

EAGLE MINING & IMPROVEMENT COMPANY, Appellant.

Appeal from District Court, Lincoln County.

Now comes the Eagle Mining and Improvement Company Appellant, in the above entitled causes consolidated, and moves the

Court — a rehearing herein, and for grounds of its said motion shows to the Court:

1st. That the Court in the statement of the case in its opinion, declares that the appellees claim a lien on the property involved for the total amount of the indebtedness claimed by them, whereas such was not the contention of the Appellees as is shown on page 5 of their brief.

2nd. That one of the questions decisive of these causes is whether there was any lien at all attaching to the Hopeful Mine and millsite in favor of the appellees, but the Court in its opinion has overlooked and failed to pass on that question.

3rd. That another of the questions decisive of these causes, is whether the statements of the President or Treasurer of the Appellant as a corporation, as to bygone transactions were binding on the Company, such statement being made if at all, when neither of them was authorized by the Company to make any contract with the deceased Hamilton, but the court in its opinion has overlooked and failed to decide that question.

444 4th. That another of the questions decisive of these causes is, whether there was any contract expressed or implied between the General Manager of the Company and the deceased Hamilton as to the payment of \$5,000.00 a year or any other sum in addition to the admitted contract regarding the purchase of certain interest in the Hopeful Mine and Mil-site from the Pascon heirs, but the Court in its opinion and decision has overlooked and failed to decide the question.

Wherefore, Appellant prays a rehearing of the above causes on the grounds pointed out herein as being decisive of said causes.

GEO. W. PRICHARD,
Attorney for Appellant.

which said motion for rehearing was and is endorsed as follows to-wit: "In the Supreme Court of the Territory of New Mexico, January Term, A. D., 1907—Eagle Mining & Improvement Company Appellant vs. No. 1177 Mary R. Hamilton et als. appellees—H. B. Hamilton Jr. Admr. of the estate of H. B. Hamilton Deceased, Mary E. Hamilton et als. appellees vs. No. 1178 Eagle Mining & Improvement Company, appellant—Motion for rehearing—Filed in my office this Aug. 29th 1907. Jose D. Sena, Clerk.—Geo. W. Prichard, Attorney for appellant."

And afterwards, on to-wit on the 28th day of December A. D. 1907 there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico, a motion to amend and affirm which said motion to amend and affirm was and is in words and figures following to wit:

445 In the Supreme Court of the Territory of New Mexico.
January Term, A. D. 1907.

No. 1177.

EAGLE MINING & IMPROVEMENT COMPANY, Appellant.
vs.

MARY R. HAMILTON et als., Appellees.

Appeal from District Court, Lincoln County.

No. 1178.

H. B. HAMILTON, JR., Administrator of the Estate of H. B. Hamilton, Deceased; MARY R. HAMILTON, et al., Appellees.
vs.

EAGLE MINING & IMPROVEMENT COMPANY, Appellant.

Appeal from District Court, Lincoln County.

Comes now the Appellee, H. B. Hamilton, Jr., Administrator of the Estate of H. B. Hamilton, deceased, by James G. Fitch, his attorney, and moves the Court to amend the judgment of affirmance rendered on the 28th day of August, A. D., 1907, in favor of this Appellee and against said Appellant for the sum of \$8419.99 so that the said Judgment shall be, either for the sum of \$5933.60, or for the sum of \$8419.99, with interest thereon from the 22nd day of August A. D., 1906, at the rate of six per cent per annum.

And for cause of said motion shows that on the said 22nd day of August, A. D., 1906, this Appellee recovered judgment in the District Court for the County of Lincoln for the said sum of \$8419.99, and that said judgment under the provisions of Section 2550 of the Compiled Laws of New Mexico, 1897, bears interest at the rate of six per cent per annum and that the Clerk of this Court in entering the judgment of affirmance herein on the 28th day of August, A. D., 1907 failed to include the said interest amounting to \$513.61.

JAMES G. FITCH,
Socorro, N. M., Attorney for Appellee.

446 which said motion to amend etc. was endorsed as follows to wit: "No. 1178—Territory of New Mexico. In the Supreme Court—Eagle Mining & Improvement Company, Appellant, vs. Mary R. Hamilton, et al., Appellees—Motion to amend judgment of affirmance—Filed in my office this 28 day of December 1907. Jose D. Sena, Clerk—James G. Fitch, Socorro, N. M., Attorney for Appellees.

And afterwards, on to wit, at a regular term of the Supreme Court of the Territory of New Mexico, begun and held at Santa Fe, the seat of Government, on the first Wednesday after the first Monday

in January, A. D., 1908, on the first day thereof, the same being the 8th day of January, A. D., 1908, the following among other proceedings were had and entered of record, following to wit:

No. 1177.

EAGLE MINING & IMPROVEMENT COMPANY, Appellant,
vs.

MARY R. HAMILTON et als., Appellees.

Appeal from District Court, Lincoln County.

No. 1178.

H. B. HAMILTON, JR., Adm., etc., et al.,
vs.

EAGLE MINING & IMPROVEMENT COMPANY, Appellant.

Appeal from District Court, Lincoln County.

This cause having come before the court upon the motion of appellees in the two above entitled causes to amend the judgment of affirmance by the Court on the 28th day of August, 1907, in favor of the said appellees and against the said appellant for the sum of \$8419.99, so as to include interest thereon from the 22nd day of August A. D., 1906 the date when the said judgment was rendered by the said District Court.

It is ordered that the said judgment be affirmed and the 447 same hereby is amended as of the 28th day of August A. D., 1907 so that the last paragraph shall read as follows:

"It is also considered by the court that the said Humphrey B. Hamilton Jr., as Administrator, do have and recover of and from the Eagle Mining & Improvement Company the sum of Eight Thousand nine hundred and thirty three and 60/100 dollars together with costs herein expended to be taxed and that execution issue therefor.

And Afterwards on to wit, on the first day of the said regular term, the following proceedings were had as follows to wit:

No. 1177.

EAGLE MINING & IMPROVEMENT COMPANY, Appellant,
vs.

MARY R. HAMILTON et als., *Appellant.*

Appeal from District Court, Lincoln County.

No. 1178.

H. B. HAMILTON, JR., Adm., et al.,
vs.

EAGLE MINING & IMPROVEMENT COMPANY, Appellant.

Appeal from District Court, Lincoln County.

These causes coming on before the court upon the motion of appellant in the above entitled causes for a rehearing and the court

having had the same under advisement and being sufficiently advised in the premises, denies the same. It is therefore considered and adjudged by the court that the motion for a rehearing in the above entitled causes be and the same hereby is denied.

And Afterwards, at the said regular term of the said Supreme Court, on the second day thereof, the same being the 9th day of January, the following among other proceedings were had and entered of record to-wit:

448

No. 1177.

EAGLE MINING & IMPROVEMENT COMPANY, Appellant.

vs.

MARY R. HAMILTON et als., Appellees.

Appeal from District Court, Lincoln County.

No. 1178.

H. B. HAMILTON, JR., Adm., etc., et al., Appellees,

vs.

EAGLE MINING & IMPROVEMENT COMPANY, Appellant.

Appeal from District Court, Lincoln County.

These cause- coming on to be heard upon the notice of the appellant in the above entitled causes of an appeal to the Supreme Court of the United States and moving the court to fix the Supersedeas Bond for the purposes of said appeal and the court being sufficiently advised in the premises fixes the amount of the supersedeas Bond in the sum of twenty thousand dollars. It is therefore considered and adjudged by the court that the Supersedeas Bond in the above entitled causes on appeal to the Supreme Court of the United States, be and the same hereby is fixed in the sum of \$20,000 to be approved by the clerk of this Court.

And Afterwards, on to wit, on the 23rd day of April, A. D., 1908, there was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico a motion for an allowance of an Appeal to the Supreme Court of the United States in the above entitled causes, which said motion for an appeal, was and is in words and figures following to wit:

449 In the Supreme Court of the Territory of New Mexico, January Term, A. D. 1908.

No. 1177.

EAGLE MINING & IMPROVEMENT COMPANY, Appellant,
vs.

MARY R. HAMILTON et als., Appellees.

Appeal from District Court, Lincoln County.

No. 1178.

H. B. HAMILTON, JR., Adm., etc., et al., Appellees,
vs.

EAGLE MINING & IMPROVEMENT COMPANY, Appellant.

Appeal from District Court, Lincoln County.

Motion for Allowance and Perfection of Appeal.

Now comes the appellant in the above entitled cause by its Attorney George W. Prichard, and prays the court to grant an appeal from the judgment and decree of this Court, rendered in the above entitled causes on the 8th day of January A. D., 1908, notice and motion for which appeal having been made on the day of the rendition of the judgment, to the Supreme Court of the United States, and that a transcript of the record of the proceedings in said cause may be sent to the Supreme Court of the United States as provided by law.

Dated this 22nd day of April, A. D., 1908.

GEORGE W. PRICHARD,
Attorney for Appellant.

And Afterwards on to wit, in vacation, on the 23rd day of April, A. D., 1908, the following order was filed and entered of record, in the record of proceedings of this court, as follows to wit:

450

No. 1177.

EAGLE MINING & IMPROVEMENT COMPANY, Appellant,
vs.

MARY R. HAMILTON et al., Appellees.

Appeal from District Court, Lincoln County.

No. 1178.

H. B. HAMILTON, JR., etc., et als., Appellees,
vs.

EAGLE MINING & IMPROVEMENT COMPANY, Appellant.

Appeal from District Court, Lincoln County.

Order Allowing Appeal as Prayed For.

The above application having been presented in due form. It is ordered and decreed that the said appellant be and he is hereby

granted an appeal from the judgment and decree of this Court in the above entitled causes to the Supreme Court of the United States as prayed for.

WILLIAM J. MILLS,
Chief Justice, etc.

April 23rd, 1908.

And Heretofore, on to wit, on the 6th day of April, A. D., 1908, the following Supercedeas Bond was filed in the office of the Clerk of the Supreme Court of New Mexico to-wit:

In the Supreme Court of the Territory of New Mexico.

THE EAGLE MINING & IMPROVEMENT CO., Plaintiff,
vs.
H. B. HAMILTON, Adm'r, et al., Defendants.

MARY R. HAMILTON et als., Plaintiffs,
vs.
THE EAGLE MINING & IMPROVEMENT CO., Defendant.

Know all men by these presents, that we, The Eagle Mining and Improvement Company, at principal, and J. H. Fulmer, Jr., A. B. Graham, A. G. Graham, Martin Lindenman, Levi A. Hughes, M. A. Otero, and George W. Prichard, as sureties, are jointly and severally and firmly bound unto Mary R. Hamilton, et al., and H. B. Hamilton Administrator et al., in the sum of Twenty Thousand (\$20,000) Dollars lawful money of the United States of America, to be paid to the said Mary R. Hamilton, et al., and the said H. B. Hamilton, Administrator, et al., for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and firmly by these presents.

Signed with out hands and sealed with out seals and dated this 2nd day of April, A. D. 1908.

The Condition of the above obligation is such that whereas, the above entitled causes were heretofore consolidated and heard together, and the above named Eagle Mining and Improvement Company, has appealed to the Supreme Court of the United States from two several judgments entered against it in said causes in the Supreme Court of the Territory of New Mexico, in favor of Mary R. Hamilton et al. and H. B. Hamilton, Administrator et al. on the 8th day of January, A. D. 1908, for the total sum of \$20,282.32 and also from the order of the court refusing the said Eagle Mining & Improvement Company a new trial thereon: and,

Whereas, the said Supreme Court of said Territory has by its order fixed the amount for which the Supersedeas Bond herein should be made on said appeal at the sum of \$8,933.60 to be secured by the appellant furnishing a supersedeas bond in the sum of \$20,000.

Now, therefore, if the said Eagle Mining and Improvement Company the appellant herein, shall prosecute its said appeal to effect, and answer all damages and costs if it fails to make its plea good, and shall perform and abide the judgment of the Supreme 452 Court of the United States, in the premises, then this obligation to be null and void, otherwise to remain in full force and effect.

THE EAGLE MINING & IMPROVEMENT COMPANY,

By A. B. GRAHAM, *President.*

[SEAL.]

J. H. FULNER.

[SEAL.]

MARTIN LINDENMAN.

[SEAL.]

A. B. GRAHAM.

[SEAL.]

AECID G. GRAHAM.

[SEAL.]

GEORGE W. PRICHARD.

[SEAL.]

MIGUEL A. OTERO.

[SEAL.]

LEVI A. HUGHES.

[SEAL.]

[SEAL.]

Attest:
A. T. ANDERSON,
Secretary of Company.

STATE OF INDIANA,
County of St. Joseph:

Before me, the undersigned Notary Public, on the 2nd day of April, 1908, personally appeared A. B. Graham, to me personally known who being duly sworn, says that he is the president of the Eagle Mining and Improvement Company, and that the seal affixed to the foregoing Supersedeas Bond is the corporate seal of said corporation; that said Bond was signed and sealed by him in behalf of the corporation and he acknowledges the same to be free act and deed of said corporation.

Witness my hand and official seal the day and year last above written.

[SEAL.]

CHARLES L. METZGER,
Notary Public.

My commission expires Sept. 3, 1911.

Acknowledgement of Sureties.

STATE OF INDIANA,
County of St. Joseph:

Before me, the undersigned Notary Public, on the 2nd day of April, A. D. 1908, personally appeared J. H. Fulner, Jr., A. B. Graham, A. G. Graham, and Martin Lindenman, whose names 453 are signed to the foregoing Supersedeas Bond as parties thereto, who each for himself acknowledged to me that he had voluntarily executed the same for the purpose therein mentioned, and that the same was his free act and deed, and the said J. H. Fulner, Jr., A. B. Graham, A. G. Graham, and Martin Lindenman, sureties aforesaid, being by me duly sworn according to law,

each upon his oath says that he is worth the sum set off opposite his name below, in property over and above his just debts and liabilities and property exempt from execution and forced sale.

J. H. FULNER,	\$10,000	[SEAL.]
MARTIN LINDENMAN,	\$5,000.	[SEAL.]
A. B. GRAHAM,	\$5,000.	[SEAL.]
ARCID G. GRAHAM,	\$5,000.	[SEAL.]

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year last above written.

[SEAL.]

CHARLES L. METZGER,

Notary Public.

My commission expires Sept. 3rd, 1911.

TERRITORY OF NEW MEXICO,
County of Santa Fe, ss.

Before me, the undersigned, Clerk of the Supreme Court of New Mexico, on the 6th day of April, A. D. 1908, personally appeared Levi A. Hughes, M. A. Otero, and George W. Prichard, whose names are signed to the foregoing Supersedeas Bond as parties thereto, who each for himself acknowledged to me that he had voluntarily executed the same for the purposes therein mentioned, and that the same was his free act and deed; and the said Levi A. Hughes, M. A. Otero and George W. Prichard, sureties as aforesaid, having been severally sworn according to law, each upon his oath says that he is worth the sum set opposite his name below, in property in the Territory of New Mexico, over and above his just debts and liabilities and property exempt from execution and forced sale.

454

LEVI A. HUGHES,	\$10,000.	[SEAL.]
GEORGE W. PRICHARD,	\$5,000.	[SEAL.]
MIGUEL A. OTERO.	\$5,000.	[SEAL.]

In Witness whereof, I have hereunto set my hand and affixed my official seal the day and year last above written.

[SEAL.]

JOSE D. SENA,

Clerk Supreme Court of N. M.

Which said Supersedeas Bond was and is endorsed in the words and figures following to wit: "Nos. 1177-8—In the Supreme Court of the Territory of New Mexico—The Eagle Mining & Improvement Company, vs. H. B. Hamilton, Admr., et al.—Mary R. Hamilton et als. vs. The Eagle Mining & Improvement Company,—Supersedeas Bond—Filed in my office this April 6, 1908. Jose D. Sena. Clerk."

And heretofore, on to wit, on the 28th day of August, A. D. 1908, there was filed in the office of the Supreme Court of the Territory of New Mexico, an opinion by the court in the above entitled causes, which said opinion by the court was and is in words and figures, following to wit:

455 In the Supreme Court of the Territory of New Mexico,
January Term, A. D. 1907.

No. 1177.

EAGLE MINING & IMPROVEMENT CO., Appellant.

vs.

MARY R. HAMILTON et al., Appellees.

Appeal from District Court, Lincoln County.

No. 1178.

H. B. HAMILTON, JR., Administrator of the Estate of H. B. Hamilton, Deceased; **MARY R. HAMILTON**, et al., Appellees.

vs.

EAGLE MINING & IMPROVEMENT CO., Appellant.

Appeal from District Court, Lincoln County.

Syllabus.

A trust arising from agreement of parties, whether written or oral, is express, and must be manifested or proved, although it need not be created, by some writing.

The findings of the trial court on the nature and terms of the trust in question in this cause are warranted by the evidence.

The correspondence between the president and the secretary and treasurer of a corporation and a person having contemporary business transaction with it in relation to such transactions is admissible on the question of acquiescence on the part of the corporation in the statement of the nature and terms of the transactions which are the subject of the correspondence made by the other party to them in his letters to such officers.

In the trial of a cause by a judge without a jury, he must determine the weight and credibility of the evidence adduced, and this court will not ordinarily disturb a conclusion which, so far as appears, may have resulted from such determination.

456 The remedy for the failure of the judge trying the cause without a jury to make a finding on a material issue is not by appeal, but by a motion for further findings.

Statement of the Case.

These cases, originally numbered 1444 and 1539 in the District Court for Lincoln County, were consolidated and tried together by Mann, J., without a jury, and were so heard in this court.

The appellees are the administrator, the widow and the heirs of Humphrey B. Hamilton, to whom by two deeds, Exhibits "A," "B" in the record, were conveyed certain interests in the Hopeful Lode

2
1
9

Mining Claim and Mill Site in the County of Lincoln, New Mexico. The first deed bears date April 15, 1901, the other March 4, 1902. They were delivered to Hamilton June 30, 1902. The parties are agreed that the said Hamilton held the property conveyed by those deeds in trust for the Eagle Mining & Improvement Company, the appellant; but they differ as to whether the trust was express, and out of that difference arise the principal questions now before us.

The appellees claimed that the appellant was indebted to the said Hamilton in the sum of \$10,500 in connection with the transaction to which the two deeds above named relate, with interest from the day of delivery, June 30, 1902, and the further amount of \$10,000 for services as the general attorney of said company for about two years, and that he had a lien on the property so conveyed to him for the total amount of such indebtedness. The appellant admits that it owed Hamilton \$9,500, less certain payments, but claims it was for all services, including what he did in obtaining said deeds; denies that he had a lien as claimed, or was entitled to interest. The appellant also alleged in its answer 'o the complaint of the appellees, in case No. 1539, that it was the owner of the premises conveyed by said deeds under certain tax deeds, and that was denied by the appellees, the plaintiffs in said cause, in their replication.

457 In the first cause the plaintiff, here the appellant, prayed for conveyance to itself of the property conveyed to Hamilton by said deeds. In the second, the plaintiffs, here the appellees, pray that an account be taken, and that in default of payment by the defendant of the amount found to have been due from it to the said Hamilton at his decease, the said property be sold to pay such indebtedness.

Opinion of the Court.

ABBOTT, J.:

That there was between the Eagle Mining & Improvement Company and Humphrey B. Hamilton a parol agreement under which he purchased the property conveyed to him by the two deeds above named is not practically in dispute between the parties, and as to most of its details they do not differ. Hamilton was to have the property deeded to himself, he was to receive from the company \$15,000 for the purchase of it, and was to have and retain for himself the excess of that amount above what he might have to expend to obtain the property. He was, besides, to waive his claim under an agreement with one E. S. Parsons for a commission on the sale of the interest of the latter in certain property which he conveyed to the Eagle Mining & Improvement Company direct. As to other particulars of the agreement between them, the parties differ. We think, however, that the undisputed evidence proves an express and a resulting trust. The difference between an express and a resulting trust is that the latter results or arises from circumstances which may be proved by any legal evidence, verbal or written; while

the former is created by agreement not necessarily made in writing, but must be manifested or proved by writing.

Perry on Trusts, Section- 26 and 79; Kronheim v. Johnson 7 Ch. D. 60. Anstice v. Brown, 6 Paige Ch. 448, 453.

The judge who heard the cause found that the letters from Hamilton to the appellant or its officers in relation to the subject 458 matter, which were apparently not questioned by them at the time, established an express trust. That such writings are legally sufficient for that purpose is well settled. Perry on Trusts, Sec. 82; Uran v. Coats, 109, Mass., 581; Steers v. Steers 5 Jones Ch. 1.

That being the case, it was for him to decide what were the terms of the agreement from the evidence. He found that the appellant agreed to furnish to Hamilton \$15,000, which was to include the purchase price of the interests in land conveyed by the two deeds first above referred to, his pay for making the purchase and compensation for giving up the claim against E. S. Parsons above named, but not for other services rendered by him. In fact, there remained an amount, after deducting the purchase price, which would seem to be more than a liberal compensation for the services probably performed by Hamilton, but that is judging after the event. It might have proved to be necessary to pay the entire \$15,000 for the interest acquired, and in that case Hamilton would have been entitled to nothing for his services to the appellant in that matter, and nothing on account of his claim against E. S. Parsons. The trial judge found, too, that Hamilton was not bound to give up the title to the property in question until he received the amount to which he was entitled from the appellant for services rendered in the purchase of it; in effect, that he had a lien on it for that sum. That was in accordance with repeated statements in writing made by Hamilton to officers of the appellant corporation, and not questioned by them.

But the terms of the agreement were to be determined in the trial court, and were so determined, on evidence which seems to us amply sufficient to sustain the findings there made. The same is true of the findings that Hamilton was employed as the general counsel of the appellant, was entitled to compensation for services rendered in that capacity, and that the amount claimed therefor was reasonable. It is true that the evidence on some or all of these points was conflicting, but the weight and credibility of the evidence adduced were for the trial judge to determine, and if 459 in the course of the trial he came to the conclusion that any witness had testified falsely in a certain particular, he had the right to disregard all his testimony. That this court will presume a finding of fact was properly made unless the contrary plainly appears is too well established to require discussion.

The appellant alleges error in the admission of the correspondence between Hamilton and Tilden, its president, and Sturgeon, its secretary and treasurer, on the ground that the statements in Hamilton's letter were self-serving, and that it did not appear that the

officers named had any authority from the board of directors or otherwise to bind the corporation in the matter in question, especially since, as the appellant claims, it was a past transaction. The correspondence related to co-temporary transactions, to the trust which had not been terminated by performance of its conditions, and to the services of Hamilton which were then being rendered.

As we have seen, it was found by the trial court that the letters of Hamilton proved the existence and contained the terms of the express trust between the parties. They also contained statements relating to Hamilton's services as general attorney for the appellant. The only effect given to the letters from the appellant's officers was that of acquiescence in the correctness of the statements in Hamilton's letters. It was not claimed that liability was created in that way, but that liabilities to and by the corporation which had been created in another way were not disavowed, but recognized as existing. It does not appear *that* the findings of the court depended on this correspondence, since there was other evidence, including letters between Hamilton and Rice, the appellant's general manager, who it was claimed in its behalf was the only one who could bind it in such matters; but it is clear, we think, that the evidence was admissible on the question of acquiescence. *Union Gold Mining Co. vs. Rocky Mountain; National Bank*, 96 U. S., 640; 4 *Thompson on Corporations* 5228.

460 The eleventh assignment of error relates to the tax title set up by the appellant, and alleges a refusal by the court to rule on that question. We find no such refusal in the record. If the appellant considered that a material issue had been raised by its claim of title under tax deeds and the denial of the appellees, its remedy for the omission of the court to find specifically on that point was not by a motion for a new trial, but by an application for further findings: *Warner v. Foote* 40 Minn. 176, *Eakin v. McCarthy* 2 Wash. Terr. 112; *Bakersen v. Gilbert* 55 Minn. 334.

No such application was made by the appellant, although the court had made the same omission in a memorandum opinion filed in the cause during its progress, to which the appellant had filed numerous specific objections without mentioning the failure to refer to the tax title, which could hardly have escaped notice.

The appellant claims that there was error in allowing interest on the sum found to be due the defendant under the terms of the trust, on the ground especially that "he can make no profit of his office." The claim of Hamilton was for services in obtaining deeds of the property to himself, and not for anything done after he became trustee. The trial court found that at a certain date he had done all that he had agreed to do for the appellant in relation to the property he held in trust, except to convey that property to it, and that he was ready and offered to make conveyance on the compliance by it with the terms of the trust, and on that state of facts found, we think correctly, that he was entitled to interest on the compensa-

on he was to receive from the time it became due. *Armijo vs. Beytia*, 5 N. M. 533 Cyc. 22, 1495.

Judgment sustained.

IRA A. ABBOTT,
Associate Justice.

We Concur:

WILLIAM J. MILLS, *C. J.*
FRANK W. PARKER, *A. J.*
WM. H. POPE, *A. J.*
JOHN R. McFIE, *A. J.*

Mann, A. J., having tried the case below, did not participate in this decision.

61 TERRITORY OF NEW MEXICO,
Supreme Court, ss:

I, Jose D. Sena, Clerk of the Supreme Court of the Territory of New Mexico do hereby — that the above and foregoing four hundred and sixty (460) pages contain a full, true and complete transcript of the record and proceedings, pleadings and opinion, filed in the above entitled causes, which is hereby transmitted to the Supreme Court of the United States, in accordance with an appeal heretofore granted herein:

Witness my hand and the seal of the Supreme Court of the Territory of New Mexico, this the 29th day of April A. D., 1908.

[Seal Supreme Court, Territory of New Mexico.]

JOSÉ D. SENA,
Clerk Supreme Court of N. M.

62 In the Supreme Court of the United States of America.
October Term, A. D. 1908.

No. —.

Appeal from Supreme Court, Territory of New Mexico.

THE EAGLE MINING & IMPROVEMENT COMPANY, Appellant,
vs.

H. B. HAMILTON, Ad'm'r, et al., Appellees.

MARY R. HAMILTON et als., Appellees,
vs.

EAGLE MINING & IMPROVEMENT COMPANY, Appellants.

Additional Transcript of Record.

463 Be it remembered that heretofore on to wit on the 23rd day of May there was filed in the office of the clerk of the Supreme Court of the Territory of New Mexico a supersedeas Bond

duly approved by Honorable William H. Moody, Associate Justice of the Supreme Court of the United States, which said supersedeas Bond was and is in words and figures following to wit:

In the Supreme Court of the United States, October Term, 1908.

No. —.

EAGLE MINING & IMPROVEMENT COMPANY, Appellant,
vs.
MARY R. HAMILTON et al., Appellees.

H. B. HAMILTON, JR., Administrator of the Estate of H. B. Hamilton, Deceased; MARY R. HAMILTON, et al.,
vs.

EAGLE MINING & IMPROVEMENT COMPANY, Appellant.

Petition for Supersedeas under Section 1007 of the Revised Statutes of the United States.

To the Honorable William H. Moody, Associate Justice of the Supreme Court of the United States:

Your petitioner, the Eagle Mining and Improvement Company, states, that it is the appellant in the above entitled causes on an appeal from the judgment and decree of the Supreme Court of the Territory of New Mexico, to the Supreme Court of the United States. That said causes were consolidated by said Supreme Court of said Territory, on the seventeenth day of January, A. D., 1907, and thereafter heard and tried together by said court.

That on the twenty-eighth day of August, A. D., 1907, the Supreme Court of said Territory filed an opinion affirming the judgment and decree of the court below, and on the same day the judgment and decree was entered of record in said Supreme Court

464 in said causes in favor of the appellees in the total sum of Twenty Thousand Two Hundred Eighty two Dollars and Sixty one cents, exclusive of costs.

That thereafter on the Twenty-ninth day of August, A. D., 1907, the attorney for your petitioner, the appellant, herein filed a motion for a rehearing, which said motion, on the eighth day of January A. D. 1908, was by said court denied, and thereupon said judgment and decree became final, and on said last named day, the attorney for appellant gave notice of and prayed for an appeal from said judgment and decree to the Supreme Court of the United States, as shown by the following entry taken from the records of said court, to-wit:

"These causes coming on to be heard upon the notice of the appellant in the abve entitled causes of an appeal to the Supreme Court of the United States, and asking the Court to fix the supersedeas bond for the purposes of said appeal, and the Court being sufficiently advised in the premises fixes the amount of the supersedeas bond in the sum of Twenty Thousand Dollars. (\$20,000): It is therefore consid-

ered and adjudged by the court, that the supersedeas bond in the above entitled causes on appeal to the Supreme Court of the United States, be and the same hereby is fixed in the sum of Twenty Thousand Dollars (20,000) to be approved by the Clerk of this Court."

That on the Sixth day of April, A. D., 1908, appellant presented to the Clerk of said Supreme Court of said Territory and the said Clerk approved and filed in accordance with the order of said Territorial Court a supersedeas Bond on said appeal, in the sum of Twenty-Thousand Dollars (\$20,000) and thereafter objections were made before the Chief Justice of said court to said bond by the Attorney for the Appellees, on the ground that said bond had not been given within sixty days after the rendition of judgment, as provided by Section 1007 of the Revised Statutes of the United States, which objections Attorney for appellants did not contest.

That on the twenty-third day of April, A. D., 1908, said appeal was perfected and the transcript of said causes so consolidated was 465 duly certified and transmitted by the Clerk of the Supreme Court of said Territory, to the Clerk of the Supreme Court of the United States, by whom said appeal has been docketed.

That pursuant to said appeal of the Twenty-third day of April A. D., 1908, citation to the appellees by the Chief Justice of the Supreme Court of the Territory of New Mexico, was duly issued as provided by law and the rules of the Supreme Court of the United States, and the said citation was duly served on the attorney for the appellees on the Fourth day of Mar., A. D., 1908, and return thereof was made as required by law.

Wherefore, in consideration of the premises, and in-as-much as your petitioner, the appellant, did not give the security required within the time fixed by Section 1007 of the Revised Statutes of the United States, and being desirous of staying process, on the judgment and decree aforesaid, petitioner prays that Your Honor grant it a supersedeas herein, and take, or cause to be taken the supersedeas Bond heretofore executed, or in lieu thereof to permit other security to be given as required by law in said sum of Twenty-Thousand Dollars (\$20,000), the amount fixed by said Supreme Court of the Territory of New Mexico, and that execution on said judgment and decree do not issue pending said appeal.

(Signed) N. B. LAUGHILIN.

Attorney for the Above Named Appellant.

STATE OF INDIANA,
County of St. Joseph, ss:

A. B. Graham, being duly sworn, deposes and says that he is the president of the -Bove named Eagle Mining and Improvement Company and has read the foregoing petition and knows of the contents thereof; that the same is true except as to matters stated on information and belief, and as to those matters he believes them to be true.

(Signed)

A. B. GRAHAM.

466 Subscribed and sworn to before me this 15th day of May, 1908.

(Signed)
[SEAL.]

CHARLES L. METZGER,
Notary Public.

My Commission expires Sept. 3rd, 1911.

The United States of America to Mary R. Hamilton, H. B. Hamilton, Jr., Fenwick Hamilton, Lulu Driscoll, and H. B. Hamilton, Jr., Administrator of the estate of H. B. Hamilton, deceased, Greeting:

You and each of you are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States, to be holden at Washington, within sixty days hereof, pursuant to an appeal granted by the Supreme Court of the Territory of New Mexico, from the judgment and decree of the said Court in a certain cause therein pending wherein The Eagle Mining & Improvement Company was appellant and you were appellees to show cause, if any there be, why the judgment rendered against the said appellant, as in the said appeal mentioned should not be corrected, and why speedy justice should not be done in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 23rd day of April, A. D., 1908.

[SEAL.]

WILLIAM J. MILLS,
Chief Justice Supreme Court of New Mexico.

In the Supreme Court of the Territory of New Mexico.

THE EAGLE MINING & IMPROVEMENT COMPANY, Plaintiff,
vs.
H. B. HAMILTON, JR., Administrator, et al., Defendants.

MARY R. HAMILTON et als., Plaintiffs,
vs.
THE EAGLE MINING & IMPROVEMENT COMPANY, Defendants.

Know all men by these presents, That we, The Eagle Mining and Improvement Company, as principal, and J. H. Fulmer, Jr., A. B. Graham, A. G. Graham, Martin Lindenman, Levi A. Hughes, M. A. Otero and George W. Prichard, as sureties, are jointly and severally and firmly bound unto Mary R. Hamilton, et al., and H. B. Hamilton, Administrator, et al. in the sum of Twenty Thousand Dollars (\$20000) lawful money of the United States of America, to be paid to the said Mary R. Hamilton, et al., and the said H. B. Hamilton, Administrator, et al., for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and firmly by these presents.

Signed with our hands and sealed with our seals and dated this 2nd day of April, A. D., 1908.

The Condition of the above obligation is such that whereas, the above entitled causes were heretofore consolidated and heard together, and the above named Eagle Mining and Improvement Company, has appealed to the Supreme Court of the United States, from two several judgments entered against it in the said causes in the Supreme Court of the Territory of New Mexico, in favor of Mary R. Hamilton, et al., and H. B. Hamilton, administrator, et al., on the 8th day of January A.D., 1908, for the total sum of \$20,282.32 and also from the order of the court refusing the said Eagle Mining and Improvement Company a new trial thereon; and

Whereas, the said Supreme Court of said Territory has by its order fixed the amount for which the Supersedeas Bond herein should be made on said appeal at the sum of \$8,933.60 to be secured by the appellant furnishing a supersedeas Bond in the sum of \$20,000

Now, Therefore, If the said Eagle Mining and Improvement Company the appellant herein, shall prosecute its appeal to effect and answer all damages and costs if it fails to make its plea good, and shall perform and abide the judgment of the Supreme Court of the

United States in the premises, then this obligation to be null
468 and void, otherwise to remain in full force and effect.

(Signed) THE EAGLE MINING AND IMPROVE-
MENT COMPANY,

By A. B. GRAHAM, *President.* [SEAL.]

[SEAL.]

Attest

A. T. ANDERSON,

Secretary of Company.

J. H. FULMER, JR.	[SEAL.]
MARTIN LINDENMAN.	[SEAL.]
A. B. GRAHAM.	[SEAL.]
ARCHID G. GRAHAM.	[SEAL.]
GEORGE W. PRICHARD.	[SEAL.]
MIGUEL A. OTERO.	[SEAL.]
LEVI A. HUGHES.	[SEAL.]

STATE OF INDIANA,
County of St. Joseph:

Before me, the undersigned Notary Public, on the 2nd day of April, 1908, personally appeared A. B. Graham, to me personally known, who being by me duly sworn, says that he is the President of the Eagle Mining and Improvement Company, and that the seal affixed to the foregoing Supersedeas Bond is the corporate seal of said corporation; that said Bond was signed and sealed by him in behalf of said corporation, and he acknowledged the same to be the free act and deed of said corporation.

Witness my hand and official seal the day and year last above written.

[SEAL.]

CHARLES L. METZGER,
Notary Public.

My Commission expires Sept. 3rd, 1911.

*Acknowledgment of Sureties.***STATE OF INDIANA,**
County of St. Joseph:

Before me, the undersigned Notary Public, on the 2nd day of April, A. D., 1908, personally appeared J. H. Fulmer, Jr., A. B. Graham, A. G. Graham and Martin Lindenman, whose names are signed to the foregoing Supersedeas Bond as parties thereto, who each for himself acknowledged to me that he had voluntarily executed the same for the purpose therein mentioned, and that the same was his free act and deed. And the said J. H. Fulmer, Jr., A. B. Graham and A. G. Graham and Martin Lindenman, sureties aforesaid, being by me duly sworn according to law each upon his oath says that he is worth the sum set opposite his name below, in property over and above his just debts and liabilities and property exempt from execution and forced sale.

J. H. FULMER, JR.,	\$10,000.	[SEAL.]
MARTIN LINDENMAN,	\$5,000.	[SEAL.]
A. B. GRAHAM,	\$5,000.	[SEAL.]
ARCHID G. GRAHAM,	\$5,000.	[SEAL.]

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year last above written.

[SEAL.] CHARLES L. METZGER,
Notary Public.

My Commission expires Sept. 3rd, 1911.

TERRITORY OF NEW MEXICO,
County of Santa Fe:

Before me, the undersigned, Clerk of the Supreme Court of the Territory of New Mexico, on the 6th day of April, A. D., 1908, personally appeared Levi A. Hughes, M. A. Otero, and George W. Prichard, whose names are signed to the foregoing Supersedeas Bond as parties thereto who each for himself acknowledged to me that he had voluntarily executed the same for the purposes therein mentioned, and that the same was his free act and deed; and the said Levi A. Hughes, M. A. Otero and George W. Prichard, sureties as aforesaid, having been severally sworn according to law, each upon his oath says that he is worth the sum set opposite his name below, in property in the Territory of New Mexico, over and above his just debts and liabilities and property exempt from execution and forced sale.

LEVI A. HUGHES,	\$10,000.	[SEAL.]
GEORGE W. PRICHARD,	\$5,000.	[SEAL.]
MIGUEL OTERO,	\$5,000.	[SEAL.]

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year last above written.

[SEAL.] JOSE D. SENA,
Clerk Supreme Court, N. M.

470 TERRITORY OF NEW MEXICO
Supreme Court:

I, Jose D. Sena, Clerk of the Supreme Court of the Territory of New Mexico, do hereby certify that the above and foregoing Bond of supersedeas, is in my judgment a good and sufficient bond to supersede the judgment in the said cause given, that the persons of Levi A. Hughes, Miguel A. Otero and Geo. W. Prichard, are to me personally known, and I know of my own personal knowledge that they have the amount for which they qualify over and above their debts and liabilities, and that they are well able to pay the same in case of necessity having sufficient property therefor within the Territory of New Mexico.

Witness my hand this the 12th day of May A. D., 1908.

[SEAL.]

JOSE D. SENA, *Clerk.*

The Foregoing Bond is approved this 19th day of May, 1908.

(Signed)

WILLIAM H. MOODY,
Associate Justice Supreme Court.

And afterwards on to wit:—on the 23rd day of May A. D., 1908, there was issued out of the Supreme Court of the Territory of New Mexico a writ of Supersedeas, which said writ of supersedeas and return thereto attached are in words and figures following to wit:

In the Supreme Court of the Territory of New Mexico.

Whereas in two certain causes lately pending in the Supreme Court of the Territory of New Mexico, wherein the Eagle Mining and Improvement Company was Appellant — Mary R. Hamilton et al. were appellees and numbered 1177 and H. B. Hamilton Jr., Administrator of the Estate of H. B. Hamilton, deceased et al. a judgment was entered in the said Supreme Court affirming the Judgment of the District Court in and for the County of Lincoln, which said Judgment of affirmance was rendered on the 28th day of August A. D., 1907, and afterwards a motion for a rehearing was duly

471 filed and on the 8th day of January A. D., 1908 — overruled by the Court, and

Whereas on the said 8th day of January A. D., 1908, the Supreme Court of the Territory of New Mexico fixed a supersedeas Bond to be given on appeal to the Supreme Court of the United States in the sum of \$20,000 which said bond was filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico on the 6th day of April A. D., 1908, and

Whereas on the 23rd day of April a motion for an appeal to the Supreme Court of the United States of America from the judgment of the Supreme Court of the Territory of New Mexico in the above entitled causes was filed which said motion was duly granted, and

Whereas later the said Bond in the sum of \$20,000 with good and sufficient sureties thereon was duly presented for approval to the Honorable William H. Moody, Associate Justice of the Supreme

Court of the United States, and by him duly approved both as to form and sufficiency of sureties thereon and ordered to be filed in the office of the Clerk of the Supreme Court of the Territory of New Mexico, and

Whereas an execution and an order of the sale of certain property have been heretofore awarded by this court in the above entitled causes and the said appeal having been granted and supersedeas bond approved and in order that justice may be done what of right and according to the constitution ought to be done and any errors in the record, if any, may be corrected in the premises.

Now, therefore, You, A. H. Hudspeth, J. W. Owen, as Sheriff of the County of Lincoln, Mary R. Hamilton, H. B. Hamilton Jr. Fenwick Hamilton, Lulu Driscoll and H. B. Hamilton Jr., as Administrator of the estate of H. B. Hamilton deceased and each of you are hereby commanded that immediately and henceforth you wholly and absolutely cease from the enforcement of said execution and order of sale, that all further proceedings based upon and in consequence of the said order of sale and said execution heretofore issued be and they hereby are stayed until further order of this Court. That you make proper return together with this writ of the said execution and order of sale.

Witness The Honorable William J. Mills, Chief Justice of the Supreme Court of The Territory of New Mexico, and the seal of the said Court this the 23rd day of May, A. D., 1908.

[SEAL.]

JOSE D. SENA, *Clerk.*

TERRITORY OF NEW MEXICO,
County of Lincoln:

Received the within writ on May 1908, and ceased from the further enforcement of said execution, and return the same with full statement of my acts thereunder.

J. W. OWEN,
Sheriff Lincoln County.

TERRITORY OF NEW MEXICO,
County of Lincoln:

I, A. H. Hudspeth, being one of the parties to whom the attached order of supersedeas was directed do hereby make return thereto that I have ceased from the enforcement of the order of sale which was to me directed and all further proceedings thereon.

A. H. HUDSPETH.

473 TERRITORY OF NEW MEXICO,
Supreme Court:

I, the undersigned, Clerk of the Supreme Court of the Territory of New Mexico do hereby certify that the above and foregoing ten pages contain a true full and complete copy of the petition for approval, the Supersedeas Bond and approval thereof, the order or writ of supersedeas and the returns thereto as the same remain on file in my office at Santa Fe New Mexico.

Witness my hand and the seal of the Supreme Court of the Territory of New Mexico This the 16th day of July, A. D., 1908.

[Seal Supreme Court, Territory of New Mexico.]

JOSE D. SENA, *Clerk.*

Endorsed on cover: File No. 21,293. New Mexico Territory Supreme Court. Term No. 228. Eagle Mining & Improvement Company, appellant, vs. Mary R. Hamilton et al., and Humphrey B. Hamilton, Jr., administrator of the estate of Humphrey B. Hamilton, deceased. Filed August 8th, 1908. File No. 21,293.



July 25

RECEIVED
U. S. SUPREME COURT
JULY 25 1910

JAMES H. MCKENNEY,

Supreme Court of the United States

OCTOBER TERM; A. D., 1909

[REDACTED]

EAGLE MINING AND IMPROVEMENT COMPANY,

Appellant,

vs.

**MARY R. HAMILTON, ET AL, AND
H. B. HAMILTON, JR., Administrator of the
Estate of Humphrey B. Hamilton, Deceased,**

Appellees.

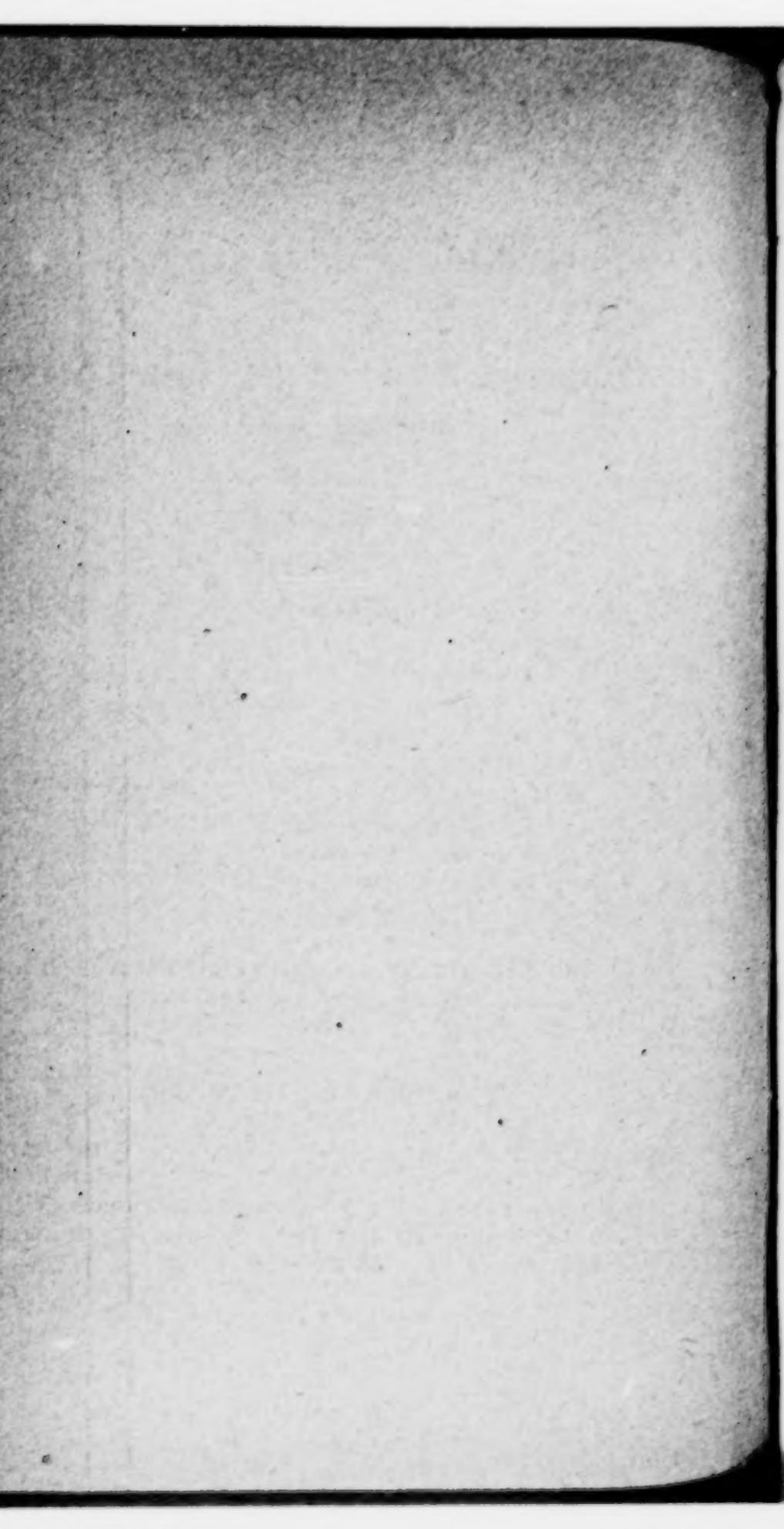
No. 51.

**APPEAL FROM THE SUPREME COURT OF THE
TERRITORY OF NEW MEXICO**

BRIEF FOR APPELLANT

SAMUEL PARKER
GEO. W. PRICHARD
ARCHIBALD G. GRAHAM
Attorneys for Appellant

TRIBUNE PRINT, SOUTH BEND.



Supreme Court of the United States

OCTOBER TERM, 1909

—
No. 228
—

EAGLE MINING & IMPROVEMENT
COMPANY,
Appellant,

vs.

MARY R. HAMILTON, et al and
H. B. HAMILTON, JR.
Administrator of the estate of
Humphrey B. Hamilton,
Deceased.

*Brief
for
Appeallant.*

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW MEXICO

STATEMENT OF THE CASE.

This suit was filed August 4th, 1903, in the District Court of Lincoln County, Territory of New Mexico, by the above named Appellant, a corporation organized under the laws of the said Territory, against the above named Appellees. The object of the suit was to have

the Appellees, who were the heirs of H. B. Hamilton, deceased, declared trustees for the use and benefit of this Appellant as to an undivided one-half interest in what was known as the Hopeful mine and millsite, in said Territory, and that they be ordered to execute and deliver to Appellant a deed to said interest and that said interest be decreed to be the property of Appellant.

Subsequently, on the 17th day of November, 1904, the said Appellees filed their complaint in said Court against the Appellant, claiming that the said H. B. Hamilton, deceased, at the time of his death, held a lien on said premises for negotiating the purchase of said interest for Appellant, and for services rendered Appellant, in the sum of \$20,000, and offered to deed said interest to Appellant upon Appellant paying them that sum. Issues were joined in the two suits and on the 19th day of April, 1905, they were consolidated, by order of the Court, into one cause. The cause was heard on the 24th day of August, 1906, and the Trial Court found that the Appellees were entitled to a judgment in the total sum of \$19,282.32 and held that the Appellees were also entitled to a lien on said premises for \$11,862.23 of said amount; and judgment and decree was accordingly entered from which said cause was appealed by this Appellant to the Supreme Court of the Territory on the 19th day of November, 1906, and said Court, at its January Term, 1907, affirmed the judgment below; the Appellant, thereupon, appealed from said last named decision and final judgment to this Honorable Court. There are two independent causes of action set up by Appellees in their complaint, one is a claim of \$9,500 and interest for services in negotiating the purchase of the title to the above mentioned and other mining interests, and other services ren-

dered by H. B. Hamilton, deceased, for Appellant under a special verbal contract with Appellant's general manager; and the other is a claim of \$10,000 of the said Hamilton for services alleged to have been rendered by him as the general attorney of Appellant, not under contract, covering a period of two years, including the time and the services covered by the special verbal contract above mentioned. The following assignment of errors is submitted:

ASSIGNMENT OF ERRORS.

I.

The Court erred in holding that H. B. Hamilton, deceased, had a lien on the trust property for the amount of his claim for services in the purchase of same as trustee.

II.

The Court erred in rejecting certain credits to which Appellant was entitled on the claim of Appellees for services of H. B. Hamilton, deceased, in acquiring titles to the property of Appellant.

III.

The Court erred in finding that H. B. Hamilton, deceased, was entitled to a salary of \$9,500 from Appellant as an additional compensation for services rendered by him as the attorney for Appellant.

IV.

The Court erred in holding that J. M. Rice, the general manager of the company, was not authorized to employ an attorney for the said company and to contract with

the said Hamilton as to what the compensation of the said Hamilton should be.

V.

The Court erred in holding that the secretary and the president of said company could by correspondence bind the company for an additional compensation to Hamilton, without authorization by the company or its board of directors.

VI.

The Court erred in sustaining the opinion of the Trial Court by holding in effect that Rice, the general manager, could not testify to an agreement with Hamilton, in a controversy between the estate of the deceased and the company in which Rice was interested.

Wherefore the said Appellant for these and divers other errors appearing in said record, prays that said record may be seen and examined by this Honorable Court, that the errors of the Court below be corrected, that the judgment of said Court be reversed and set aside and for such other relief as Appellant may be entitled to in the premises.

SAMUEL PARKER,
GEO. W. PRICHARD,
ARCH'D G. GRAHAM,
Attorneys for Appellant.

POINTS AND AUTHORITIES.

I.

The Court erred in holding that H. B. Hamilton, deceased, had a lien on the trust property for the amount of his claim for services in the purchase of same as trustee.

The record in this case discloses the fact that prior to the date of organization of the Eagle Mining and Improvement Company (this Appellant) May 28, 1902, E. S. Parsons, C. C. Parsons and Agnes Carpenter owned two-thirds interest in the Hopeful mine and mill-site in Lincoln County, in the Territory of New Mexico; that E. S. Parsons, who owned one-sixth of said interest, entered into a written agreement with H. B. Hamilton on the 10th day of April, 1893, by which he agreed to convey to Hamilton fifteen percent (15%) of his interest for legal services to be rendered him (R. 11). Before the company was organized one J. M. Rice, who afterwards became its general manager, was interested in acquiring the titles to the mine and mill-site, together with other interests, for the company and hence, in the early part of 1901 he purchased the interest of S. E. Parsons and assumed the payment of \$1,000, the amount agreed that Hamilton should have as fees for services rendered Parsons. Hamilton was a party to this agreement and agreed to waive his lien against the Parsons' interest. A further agreement was made between Rice and Hamilton as follows: Hamilton was to attend to the legal business of the company to be organized, by preparing the necessary papers for organization, secure certain out-

standing titles, obtain patents to a number of mining claims, represent the company in the matter of disputed claims, and especially to secure the title to a one-third interest in the Hopeful mine and mill-site from C. C. Parsons and Agnes Carpenter. For the service to be rendered, he was to receive from the company, when organized, the difference between the cost of this one-third interest and the sum of \$15,000, including the \$1,000 assumed by Rice—the fee due Hamilton from E. S. Parsons—the interest of C. E. Parsons and Agnes Carpenter were to be deeded to Hamilton in trust for the company and Hamilton was to make his deed to the company whenever he might be called on so to do. Hamilton acquired the interest from the two parties named for the sum of \$5,500, the money having been furnished by Rice, and Rice acknowledged an indebtedness to Hamilton of \$9,500, to be paid when the mines became a success, which amount was subsequently acknowledged by the company as due Hamilton on the contract between him and Rice. (R. 3-5-182). The agreement between Rice and Hamilton was oral, it was never manifested or proved by writing, unless it can be said that some letters of Hamilton's written sometime thereafter to various officers of the company, omitting Rice, can be so considered. Hamilton died without executing a deed to the company for the interest he held as trustee. The undisputed testimony of Rice shows that Hamilton agreed to deliver deeds to the company whenever he might be requested so to do. The reason Hamilton was allowed to take the deeds in his own name was because of his representations to Rice that if the vendors "knew the company was buying the property they would want more money for it

than he could get it for." (R. 182-184). Mr. Rice was asked:

Q. State whether or not there was any agreement between yourself and Hamilton as to whether Hamilton was to make a deed to anyone of this property.

A. The agreement between Hamilton and myself was that he was to deed this property to the Eagle Mining and Improvement Company at any time that I might request it.

Q. What was to be done, if anything, on your part or on the part of the company before Hamilton should make his deed or deeds to the company for this interest?

A. There was nothing to be done by the company or me. (R. 184).

The letters of Hamilton to Rice and to Tilden, the secretary and president of the company, corroborate the testimony of Rice. (R. 244-246). Under the agreement between Rice and Hamilton, the latter had no discretion in the matter but it was made his duty to deliver the deeds to the company whenever called on for that purpose. The withholding of the deed until Hamilton was paid a sum of money was not contemplated when the agreement was made, whatever the afterthought of Hamilton might have been.

It is conceded by Appellees that Hamilton held the title of the property in his name as trustee. There was some contention between counsel in the court below as to whether the trust was an express trust, or a resulting trust, but for the purposes of this case it is probably immaterial whether it was the one or the other. The Statute of Frauds is in force in New Mexico but this case does not come within the Statute.

DeCordova v. Korte, 7 N. M. 679.

"There is no doubt of the general proposition that a trust results in him who pays the consideration of the estate when the title is taken in the name of another and such trust is not within the statute, and that parol evidence is admissible to show whose money is actually paid for the property."

Alcott v. Bynum, 84 U. S. 570.

Dulcie v. Ford, 138 U. S. 587.

Buck v. Swazey, 35 Me. 41.

Perry on Trusts, Vol. 1—Sec. 133.

Appellant contends that no lien lies against the trust property in favor of Appellees. The trust was for a specific purpose and no lien attaches unless there was an agreement between the parties to that effect.

Anderson v. Bosworth, 15 R. I. 443.

Maxey v. Leigh, 44 Tex. 506.

State v. Lucas, 24 Ore. 168.

Bracher v. Olds, 60 N. J. Eq. 449.

MacPherson v. Cox, 6 Otto 404.

West v. Bacon, 164 N. Y. App. 429.

The case last cited is very much in point for the reason that the attorney made an explicit declaration of trust in favor of his client, followed by the statement that he would convey the premises to such person as his client might direct, and to pay over the proceeds of such sale to his client.

II.

The Court erred in rejecting certain credits to which Appellant was entitled on the claim of Appellees for services of H. B. Hamilton, deceased, in acquiring title to the property of Appellant.

The testimony of the general manager, Rice, and of the secretary of the company, Sturgeon, duly received by the court, is nowhere disputed that Hamilton was paid the sum of \$2,100 besides the \$5,500 with which he was furnished to purchase the C. C. Parsons and Agnes Carpenter interests (R. 185, 186, 211, 212), yet the Court below rejected a credit of \$1,000 contained in the \$2,100 payment (R. 28) and the action of the Trial Court in rejecting this item of \$1,000 was sustained by the Supreme Court of the Territory to the prejudice of Appellant (R. 281). Neither the testimony of the general manager nor the secretary of the company was impeached. The \$1,000 payment was rejected by the Trial Court and his action sustained by the Appellate Court without a particle of evidence contradicting its correctness, and without a word of reason why it was done. The Appellant contends that it should have been credited with the payment of \$2,100 and the amount should have been deducted from the \$9,500 for services of Hamilton in acquiring titles to the Hopeful mine and mill-site and for other services rendered under the special contract with Rice, the general manager of the company.

This suit was brought in equity and the cause was tried without a jury, upon the depositions of witnesses, no witness testified orally before the Court, so that the theory that the Trial Judge, who sees and hears the witnesses testify, has superior advantages in arriving at the truth, does not apply in this case. The question presented to this Court for review, under the above assignment of errors, is not one relating to the weight or sufficiency of the evidence alone, but goes to the exclusion of undisputed testimony which should have been considered by both the trial and Appellate Courts.

This Court, however, sitting as a court of review, will pass upon the weight or sufficiency of evidence in equity cases:

Dirst v. Morris, 14 Wall. 484.

Hyde v. Booram, 16 Pet. 169.

Riding v. Johnson, 128 U. S. 212.

An appeal, distinguished from a writ of error, presents for review in this Court, questions of both law and fact.

U. S. v. Goodwin, 7 Cranch. 108.

Cohen v. Virginia, 6 Wheat. 264.

Hemingway v. Fisher, 20 How. 255.

In re Naegle, 135 U. S. 42.

We insist, in this case, that the refusal of both the Trial and Appellate Courts to consider the evidence showing the payment of \$1,000 to Hamilton by the Appellant, was in fact a rejection and exclusion of material evidence, which Appellant was entitled to have the benefit of, and the rejection of which has been an injury to Appellant.

The improper rejection of testimony on the trial before a judge without a jury is error subject to review—

Arthur v. Hart, 17 How. 6.

Gregg v. Mass., 14 Wall. 564.

Cannon v. Pratt, 99 U. S. 619.

Hornbuckle v. Stafford, 111 U. S. 389.

III.

The Court erred in finding that H. B. Hamilton, deceased, was entitled to a salary of \$9500 from Appellant as an additional compensation for services rendered by him as the attorney of Appellant.

As to this item there is no pretense on the part of the Appellees that the company, through its general manager or through its board of directors, ever made any contract with Hamilton to pay him that amount as an additional compensation. This claim is disputed by the general manager and his testimony is corroborated by two witnesses, namely, Dr. R. C. Dryden and I. E. Webber. Here is what the witness Dryden says in answer to questions as to what Hamilton said he was to get for his services for the company.

Q. Now state, please, what he (Hamilton) said to you in reference to the agreement or agreements.

A. That he was to purchase the Eagle—or the Hopeful mine for the Eagle Company; that in compensation for his legal services in attending to the legal work of the company he was to get the difference between the purchase price and fifteen thousand dollars; that the company was to pay him fifteen thousand dollars and he would buy the property; that the company was to pay him the difference between the purchase price and the fifteen thousand dollars as it came due, as the purchase was done, as the purchases were made, and the balance was *done*, as the purchases were made, and that the balance was to be paid when the company was on a good footing; when the mines were producing; it was to be paid out of that.

Q. State whether or not he said anything in that conversation about any other compensation he was to receive.

A. He stated that that was to be his sole compensation.

(R. 228-229).

I. E. Webber, another witness for Appellant, makes the following statement of conversation between him and Hamilton, as to the compensation Hamilton was to receive for his services:

A. I understand that inferences don't go. He made the remark to me—Well, first I made the remark; that I hoped and wished it would succeed, and would like to see it succeed; that we had had so many black eyes in the mining business around here that I would like to see something go through and succeed, and it would help the country; and he said it seems more than that to me; it is a personal matter to me; it means ten thousand dollars to me if it succeeds. (R. 226).

The testimony of this last witness, who was entirely disinterested, has two important bearings, namely, that ten thousand dollars was all that Hamilton ever expected, and that was to be paid to him when the company made its venture a success. This last statement by Webber harmonizes with the statement of Dryden. Against these three witnesses—Rice, Dryden and Webber—there was not a syllable of testimony offered by Appellees to show that Hamilton was to get any additional compensation for his services, except a letter from him to the secretary of the company, written a year and a half after his contract with Rice, the general manager, that he thought his services ought to be worth five thousand dollars a year. (R. 110-111). The Appellees rely upon an answer to the letter by the secretary as binding upon the company to pay this additional sum. See the secretary's letter (R. 111). Appellants also claim that J. S. Tilden, the president of the company, acquiesced

in the claim of Hamilton for the additional ten thousand dollars but the letter of Hamilton to Tilden of May 14, 1903 (R. 165), does not bear out this contention. Hamilton, in that letter, only claimed ten thousand dollars all told, and we submit this was the money he was to get for his services for securing title, etc., under his contract with Rice, and the letter corroborates the statements of Rice, Dryden and Webber.

Appellant contended before the Trial Court and also before the Supreme Court of the Territory, and still contends, that Hamilton's letter to the secretary of the company and to Tilden, its president, were only self-serving statements written voluntarily on his part, and constitute no part of the *res gestae* and were inadmissible in evidence.

Freeborn v. Smith, 2 Wall. U. S. 160.

Boston and Albany R. R. v. O'Reily, 158 U. S. 334.

Cain v. Cain, 140 Pa. St. 144.

Smith v. Eyre, 161 Pa. St. 115.

Stickney v. Billings, 30 Hun. 304.

Webber v. Hayes, 117 Mich. 256.

IV.

The Court erred in holding that J. M. Rice, the general manager of the company, was not authorized to employ an attorney for said company, and to contract with said Hamilton as to what his compensation should be.

The Trial Court, in its opinion, held that the general manager, Rice, "was not, under the by-laws of the company, authorized to employ a general attorney, etc." (R. 18), and the Supreme Court of the Territory fails to come to any specific conclusion on this point (R. 280).

The power of the general manager to employ an attorney was a material issue in the case, and the Supreme Court of the Territory should have passed on that issue because the opinion and findings of the Trial Court were specifically set up in error on this point in Supreme Court as they are here. It will be observed that no finding of law was made by the Trial Court, nor by the Supreme Court of the Territory as to the power of the general manager to employ an attorney for the company on general principles, independent of the by-laws on the subject, but the opinion as to want of power in the general manager to employ an attorney, was based upon the by-laws of the company exclusively. The contention of the Appellant is that the power of the general manager to employ an attorney for the company was given to him both by the by-laws of the company, and by the law that governs in such cases.

Section Seven of the by-laws of the company is as follows:

The general manager of the said company shall have the full and complete control of all the business affairs of the company in the management of its mines and reduction works in the County of Lincoln and Territory of New Mexico and elsewhere. He shall have the right to purchase machinery, supplies and property necessary for the conduct and management of the business of the company and *shall generally have charge of all its business affairs* in the operation and management of its property, and shall make his report to the board of directors, from time to time when required. (R. 99).

The Appellant contends that Rice was the general manager of the company for all purposes under this by-law. That he had authority under it to employ counsel for

the company, and that the company recognized that power in that it never questioned the right but acquiesced in what he did and afterwards approved his acts. But Appellant insists that the general manager had the authority to employ an attorney under the law, unless prohibited by the by-laws, or board of directors, of the company. Mr. Thompson, on the Law of Corporations, volume 4, section 4866, says, in effect: Managing officers of corporations have power to employ attorneys and counsellors to prosecute or defend suits for the corporation, or otherwise to assist in legal proceedings in which it is interested, without any express delegation of power so to do, or any formal resolution of the board of directors to that effect. See also:

Southgate v. Atlantic R. R. Co., 61 Mo. 89.
Western Bank v. Gilstrap, 45 Mo. 419.
Amer. Ins. Co. v. Oakley, 9 Paige 496.
Union Mfg. Co. v. Pitkain, 14 Conn. 174.

The managing officer here referred to does not mean anyone who may happen to be an officer of the company, but it means one who is acting as its manager and who is recognized as such by its board of directors. A president, or a secretary, or a treasurer of a corporation is not a managing officer *per se*. In the case at bar no general power as a manager had been conferred on anyone except Rice, Appellant therefore insists that he had the power to employ counsel under the section of the by-laws referred to and independently of that by-law he had the power under the general rule of law, to employ an attorney for the company, and that no other officer of the company, except him alone, had that power.

V.

The Court erred in holding that the secretary and the president of said company could by correspondence bind the company for an additional compensation to Hamilton without authority of the company or its board of directors.

It is contended by Appellees, that Sturgeon, the secretary, and Tilden, the president of the company, by their letters recognized the demand of Hamilton for extra compensation. It is not alleged by them that the secretary and the president entered into any contract with Hamilton, but that they recognized his claim. The secretary of the company, in his testimony (R. 212) says, that at the time he was writing to Hamilton he was not aware of the contract between Hamilton and Rice. Tilden, the president of the company, in his testimony (R. 214) says the same thing in effect. He was asked:

Q. Do you remember of receiving any letters from him (Hamilton) in relation to pay for services for the company—legal services?

A. Well, yes, either his services or an account that was due him on a claim; part of the Hopeful property.

It is clear from this testimony that Tilden never understood that Hamilton had two accounts against the company, one for services for securing titles to property and another for legal services. It is undisputed that neither the secretary nor the president of the company, at the time they were in correspondence with Hamilton had any knowledge of the contract between the general manager of the company and Hamilton. Neither the secretary of the company nor its president was an authorized agent of the company, nor is there any proof by the Appellees

that either had been clothed with power by the board of directors to act, or to contract any debts on the account of the company for any purpose. Such being the facts the authorities seem to be absolutely clear that the letter of the secretary and the president do not impose any liability on the company, for the following reasons: First, because they were not agents in that regard and did not claim they were; Second, because their letters relate to a past transaction to which neither of them was a party; Third, because the board of directors had not authorized them, or either of them, to act in the employment of an attorney, but had left that duty to the general manager.

The following cases are cited as being in point:

Tuthill Spring Co. v. Shaver Wagon Works, (1888)

35 Fed. Rep. 644.

This was an action on five notes, brought by the Tuthill Spring Company. The defense as to one of the notes was that it was really the property of W. Y. Shaver, the payee thereof, and W. T. Shaver's endorsement thereof to the Spring Company was not a bona fide transfer, but intended only to confer jurisdiction on the U. S. Court. The only evidence to support this defense was that Tuthill, the president of the Spring Company, at Chicago, had stated to the Wagon Company's representative that the Spring Company did not really own the notes, but that it was Shaver's scheme to have the note sued on in the U. S. Court. Held inadmissible because (1) the statement was made months after the transfer of the note to the Spring Company and, therefore, formed no part of the *res gestae*, (2) there was no showing that Tuthill "was the party or officer of the company who had participated in making the arrangements by

which the Shaver note was transferred to the plaintiff or that he had any actual knowledge of the facts of that transaction." Opinion of Shiras, J. This case was not appealed or subsequently cited according to Shepard's citations.

First National Bank of Xenia, Ohio v. Stewart, (1885)
114 U. S. 224.

The cashier of the bank had sold a note to Hyde and afterwards paid it. At the time he paid it the cashier made a statement to the holder of the note as to his (the Cashier's) authority to dispose of a certificate of stock that was attached to the note as collateral. And two months later, when Hyde was negotiating with the bank for the purchase of the certificate the cashier, in conducting the bank's side of the negotiations, stated that the widow of the deceased owner of the certificate preferred to keep it. Held, that the cashier's statements were all admissible because they were part of the *res gestae* and made at the time of the transactions in question. Woods, J. stated the rule thus:

"The declarations made by an officer or agent of a corporation in response to timely inquiries, properly addressed to him, and relating to matters under his charge, in respect to which he is authorized, in the usual course of business, to give information, may be given in evidence against the corporation."

Note the limitations and observe that in the case at bar (1) no "inquiry" was addressed by Hamilton to Tilden or Sturgeon "properly" or otherwise. (2) Neither Tilden nor Sturgeon was shown to have had anything to do with making the contract with Hamilton for legal services or any knowledge in reference thereto.

Fairlie v. Hastings, (1803) 10 Vesey 123.

1 Greenleaf's Evidence, Section 113.

Trustees Baptist Ch. v. Brooklyn Fire Ins. Co., (1863)
28 N. Y. 153, 159, 160.

The question here was whether there was a verbal agreement with the company to extend a policy that by its terms had expired before the fire that destroyed plaintiff's church. Plaintiff had given evidence tending to show an extension of the policy made by verbal agreement between Lewis, the treasurer of the church, and Ellsworth, president of the insurance company. Plaintiff thereafter called Stevens, secretary of the Insurance Company, and offered to prove by him that he (Stevens), the secretary, had acknowledged to one of the church trustees, that the church was insured at the time of the fire. Held, that the offered testimony was properly excluded. The Court said (page 160) that "as principal evidence it was incompetent, being the declaration of a third person, who, though an agent of the defendants, was not then engaged in the performance of any act relating to his agency so as to bring the case within the rule which allows the declaration of an agent as part of the *res gestae*."

The Court said further that the offered testimony was not competent to contradict other testimony given by the same witness to the effect that he had said that there was no insurance on the church, because such other testimony (there was no insurance) was not material. Upon this point Denio, J. said: "It was conceded upon the pleadings and throughout the case, that there was no written contract of insurance for the year in which the church was burned, and it was not pretended that there was any verbal arrangement made with Mr. Stevens (the

secretary). The only one attempted to be established arose out of the conversation between Lewis (the church treasurer) and Ellsworth (the Insurance Company's president) in New York to which Stevens (the insurance company's secretary) was not a party and of which it does not appear that he had any knowledge. I think this case does not, therefore, fall within the rule mentioned and that the ruling was correct." In other words, the Court held that statements by the Insurance Company's secretary as to a past transaction (a verbal contract of insurance alleged to have been made by its president) of which he, the secretary had no knowledge, did not bind the Insurance Company as admissions. Note the similarity to the case at bar. A contract of employment had been made by Rice in New Mexico. No other officer of the Eagle Company had knowledge of it. Statements as to the terms of such employment are alleged to have been made months thereafter by Tilden, the Eagle Company's president, and by Sturgeon, its secretary. Under the ruling in the foregoing case such statements were not competent as admissions of the Eagle Company.

Goddard v. Crefield Mills, (1896) 75 Fed. Rep. 818 at 821.

This was an action to recover damages for Goddard's failure to take 5,000 pieces of cotton goods that he had ordered at the mills. Goddard called a witness who testified that Broadway, a salesman of the Crefield Mills, had said to him, the witness, that the Crefield Mills had broken the contract by selling like goods to other parties. Held, that such testimony was properly stricken out. Broadway's statements were as to matters not within the scope of his employment and were made as to a past transaction and, therefore, not competent as admissions by the corporation.

C. M. & S. P. Ry. Co. v. Belliwith, (1897) 83 Fed. Rep. 437 at 442.

Action against the R. R. for personal injuries. Defence, settlement for three hundred dollars and release given by plaintiff. Reply, that plaintiff could not read and settlement obtained by fraud. Evidence of a witness who testified that six months after payment of the three hundred dollars, Pool, the claim agent of the R. R., had said to him, the witness, that the company had never made a settlement with plaintiff, but had only given him a little money to help him out, was inadmissible. Sanborn, J., said (p. 442): "The company, so far as this record shows, had never delegated to him the power to admit that the settlement, which Mr. Wilson had made, had not been made, and it required a special delegation of power to authorize the destruction of the contract of release by any such admission."

Holmes v. Montauk Steamboat Co., (1899) 93 Fed. Rep. 731 at 736.

Holmes, a ship broker, negotiated a lease of defendant company's ship to the Key West Company for four months at \$100 per day, and received five per cent of \$12,000 as commission therefor. The ship was lost and insurance was paid to defendant company, and this suit was brought by Holmes to recover five per cent of the insurance money upon a verbal agreement that it should be paid to him in the event of the ship's destruction and the payment of the insurance. Held, that a question calling for "what took place" between plaintiff and the president of defendant company after the loss, was properly excluded.

Brush Elec. Co. v. City Council of Montgomery,
(1896) 114 Ala. 433, 444.

Action for the price of lights furnished defendant city. Held, that evidence was improperly admitted that plaintiff's president had promised to continue furnishing lights in the absence of proof that he had authority to bind his company by such promise. Brickell, J., said: "In the absence of all evidence touching the scope of his authority as president, it cannot be presumed that he had any other or greater power than any other director." The same rule was made as to like declarations by the city's clerk.

Garner v. Hall, (1898) 122 Ala. 221 at 229.

This was an action on a note payable on completion of a certain railroad. Held, that statements by the president and vice-president of the railroad that the railroad was completed "were mere declarations by an agent and in the absence of all evidence touching the scope of their authority by the railway company to make them, they could not affect the right of the plaintiffs."

Mobile, Etc. R. R. v. Coggsbill, (1888) 85 Ala. 456.

Action for damages against R. R. for using land alleged to belong to plaintiff. Plaintiff's witnesses testified that the R. R.'s superintendent proposed to buy the land in question and that its supervisor asked her if she had any objection to its building there. Held, error to admit testimony of such statements over objection, in the absence of authority from the railroad to make them. Court said: "The company would not be bound, or should its legal rights be prejudiced, by unauthorized acts or declarations of its officers beyond the scope of their agency."

Ricketts v. Birmingham St. Ry. Co., (1888) 85 Ala. 600.

Action for personal injuries. Defense, that defendant did not own or control the road at the time. Declarations by president of defendant company, after the injury, made casually to a third party, that he was still in control of the road and was about to turn it over to a new company, held not admissible. Court said: "The declarations are not shown to have been made while he was in the performance of his duties as such officer or while acting for the company, or while transacting any business contemporaneous with the declarations, which they were to elucidate or explain. The declarations were not within the scope of his authority, and are not binding on the defendant.

Henry v. Northern Bank of Ala. (1879) 63 Ala. 527, 537.

Action for a deposit. Held, that admissions of liability by the president of the defendant bank did not bind it. Manning, J. said: "The management of its affairs had been committed, by its charter, to a board of ten directors. Debts of the bank might result from its contracts or arise out of transactions with it, but could not be created by the mere admission of its president, any more than its rights could be released or annulled by his unauthorized directions."

Terry v. Birmingham National Bank (1890) 93 Ala. 599 at 609.

Here the maker of a note authorized the stock exchange, a corporation, to sell his collateral upon default. Held, that the books of the stock exchange (considered

as his agent) were not admissible to prove a sale of the collateral. The Court said, (p. 609): "It is well settled that the admissions of an agent, as to bygone transactions, do not bind his principal The declarations and admissions themselves are not competent as independent evidence, to prove that they were made contemporaneously with the act or to show that they were *res gestae*."

Hall v. Mobile R. R. (1877) 58 Ala. 10 at 24.

Reports by the president of a R. R. to its directors or stockholders enumerating certain claims as liabilities, held not to bind the railroad as admissions or to amount to an assumption of such liabilities.

Love v. Anchor Raising Co., (1896) Calif. No official report, 45 Pac. Reporter 1044 at 1046.

The president of defendant being about to sell a note made payable to him by defendant, stated that \$5,000 was due upon it. Held, that it was error to admit the statement in evidence, the president's interests being antagonistic to those of the corporation.

Extension Gold Mining Co., v. Skinner, (1901) 28 Colo. 237.

Action for commissions for making sale of real estate. The contract for commissions was made by Fair, appellant's secretary and treasurer. The sale was consummated by the assignee of appellant, but without knowledge of the contract for commissions. Held, that Fair's statement as to his authority did not bind the corporation, that Fair's contract had never been ratified, and that a judgment for the commissions must be reversed.

Fairfield Co. Turnpike Co. v. Thorp, (1839) 13 Conn. 172.

Action on subscription to plaintiff's stock. Defendant offered to prove that Hickock, a director of plaintiff and plaintiff's agent for securing subscriptions, agreed at the time of defendant's subscription that it should not be enforced unless the subscriptions were sufficient to build the road. Held, properly rejected. Court said (p. 178): "The rule is well settled that the confessions of an agent are not evidence against his principal, although his declarations accompanying his acts may be admitted as part of the *res gestae*."

Florida Midland R. R. v. Vernerdoe, (1888) 81 Ga. 175 at 185.

Action for the price of cross-ties. Judgment for plaintiff reversed, because evidence was admitted that a director of defendant stated to witness that the person by whom contract was made, was the authorized agent of the railroad. Court said (p. 185): ". . . . we do not think the declarations of the director, as to whether a certain person is an agent of the company or not, are sufficient to bind the company."

Evans v. Atlanta R. R. (1876) 56 Ga. 498 at 500.

Action for damage to corn while in transit on defendant's road. Held, that the endorsement on the bill of lading by defendant's agent that the corn was received in good order was not admissible to bind defendant, unless it first be proved that such endorsement was part of the business of the agent.

Wheeler v. Home Savings Bank, (1900) 188 Ill. 34.

Wheeler, who was a director, treasurer and general manager of the Singer and Wheeler, a corporation, falsely represented to a bank that he had power to pledge as security for his personal debts warehouse receipts owned by corporation. Held, that the corporation was not bound by his representations. Citing 111 U. S. 164.

C. & E. I. Ry. v. Hay, (1887) 119 Ill. 493, 503.

Bill to enforce against vendee of certain land a right of way contract made by the railroad with his vendor. Held, that representations to the vendee of the railroad's right of way agent as to the quantity of land embraced in the right of way, did not bind the railroad. The Court said (p. 503): "This alleged statement of Blakely was made in ignorance of the company's rights. He was a mere employee in settling up right of way matters, under the orders and supervision of his superior officers, and had no authority to release any rights the company had in its lands or to bar it, by estoppel, from the assertion of any of its rights thereto."

Sweetland v. Ill. Tel. Co. (1869) 27 Iowa 443, 458.

Action for damages for mistake in telegram. Judgment for plaintiff reversed, because the trial court admitted evidence of statements by the operator as to how the mistake occurred, made subsequent to the occurrence. Citing Greenleaf, p. 113.

Empire Mill v. Lowell, (1889) 77 Iowa 100.

Appeal from judgment on counter claim for wrongfully suing out an attachment. Held, that statements by a non-resident attaching creditor's attorneys made after the at-

tachment had been brought, were not competent to prove malice in bringing an attachment suit. The Court said that "The statements and admissions of an agent are not admissible against the principal, except they are made at the time of the transaction to which they relate, and such transaction is within the scope of the agent's employment."

Atchison R. R. v. Osborn, (1897) 58 Kans. 768.

Action for damages from fire caused by locomotive. Subsequent declarations of section foreman and depot agent as to the cause of the fire held not binding on the railroad.

Acme Harvester Co. v. Madden, (1897) 4 Kans. App. 598 at 604.

Action on a guaranty. The Court stated the rule thus: "The declarations of an agent within the scope of his employment are admissible when made in connection with a transaction for his principal, as a part thereof. But his declarations with reference to a past transaction are not admissible against the principal."

Chesapeake R. R. v. Smith, (1897) 101 Ky. 104 at 110.

Action for fire caused by a locomotive. Subsequent promise by defendant's claim agent that he would pay the claim within sixty days not binding on the defendant as an admission of liability.

Graddy v. W. U. Tel. Co., (1897) 19 Ky. Law Rep. 1455.

Action for failure to deliver a message. Held, that it was an error to admit evidence of statements, after the occurrence, of an employee of defendant that failure to deliver the message resulted from gross negligence of defendant.

Louisville R. R. v. Beauchamp, (1900) 108 Ky. 47.

Action for killing a colt. Error to admit subsequent declarations of defendant's section foreman that the original construction of the cattle guard was improper. Court said: "There is no testimony that the section boss was charged with the construction of this cattle guard . . ."

Hill v. New Orleans R. R., (1856) 11 La. Ann. 292.

Personal injuries. Held error to admit evidence that defendant's superintendent said after the accident that defendant's engineer had been guilty of gross negligence and that he (the superintendent) had ordered his discharge.

Polleys v. Ocean Ins. Co., (1837) 14 Me. 141.

Admissions by a stockholder not binding on the corporation.

City Bank v. Bateman, (1826) 7 Harris & Johnson, (Md.) 104.

A declaration by president of appellant bank to another officer that certain money brought into the bank belonged to plaintiff, Bateman, held not admissible as against the bank unless it be shown that the president had authority to make such declaration in behalf of the bank.

Gilmore v. Mittineague Paper Co., (1897) 169 Mass. 471.

Personal injuries. Held not competent to prove that defendant's treasurer had said that it was not a woman's work to run the machine by which plaintiff was hurt. The Court said: "The admissions of Moses, who was the general manager and treasurer of the defendant, not made in the performance of his duty as such treasurer, were incompetent."

Tripp v. Metallic Packing Co., (1884) 137 Mass. 499.

Action on this written agreement: "Due to Thomas Tripp \$2000 upon successful working of a metallic packing this day purchased of him." Held, error to admit evidence of admissions of liability made by defendant's treasurer. The Court said (p. 503): "The money was payable on a condition and neither the treasurer nor the individual directors of the defendant corporation were authorized to decide that the condition had been performed and the money became due, nor to waive or admit the performance of the condition. Admission of indebtedness on the contract was beyond the scope of the authority of the treasurer and would be the mere declaration of a third person, which could not affect the defendant."

Mott v. Detroit R. R. (1899) 120 Mich. 127.

Personal injuries. Subsequent declarations by foreman of a section crew whose handcar injured plaintiff held inadmissible.

Peek v. Detroit Novelty Works, (1874) 29 Mich. 312.

Action by discharged officer of defendant to compel it to perform alleged agreement to buy his stock. Evidence of admissions by directors, in and out of session, held not competent as against corporation.

Kalamazoo Novelty Co. v. McAllister, (1877) 36 Mich. 327.

Suit for salary. Plaintiff offered in evidence a certificate by defendant's treasurer, stating that there was due him the balance claimed. Held, it was not admissible in evidence. Court said (p. 328): "It could not be entitled to reception

in evidence as an admission of the corporation without its being made to appear that Kellogg (the treasurer) had authority to make it as an act of the corporation. Green's Brice, 425 and note. There was no direct evidence of such authority. No by-law or resolution conveying the power was shown. His position as consulting director implied no power to liquidate and fix the sum which the company should pay McAllister or to state the amount fixed as a fact admitted by the company."

Reem v. St. Paul Ry. Co. (1899) 77 Minn. 503.

Personal injuries. Error to admit evidence of what conductor and claim agent of defendant said after the accident.

Browning v. Hinkle (1892) 48 Minn. 544.

Action for balance of subscription against transferee of shares. Defence, that before buying the stock defendant was informed by a director and by the secretary of the company that the stock was full paid and nonassessable, and bought in reliance upon such representations. Held, that the company and its assignees in bankruptcy were not bound by any such representations. Dickinson, J., said (p. 548): "The mere fact that one is a director, president, secretary or other officer of a corporation, does not make all his acts, or declarations, even though relating to the officers of the corporation, binding upon the latter. Such persons are mere agents and their declarations are binding upon the corporation only when made in the course of the performance of their authorized duties as agents, so that their declarations constitute a part of their conduct as agents—a part of the *res gestae*,"

Bangs Milling Co. v. Burns, (1899) 152 Mo. 351 at 381.

Statements by president of a bank in case to which it was not a party held not competent as admissions of the bank.

Low v. Connecticut R. R., (1864) 45 N. H. 370 at 381.

Assumpsit for services as promoter in the organization of defendant R. R. Evidence of the statement by defendant's president that the plaintiff ought to be paid held not admissible. Bellows, J., said: "It is not a promise of one authorized to bind the corporation, nor an admission of one authorized to speak for it—at least no such authority appears—and for aught we can see it stands as the opinion merely of an officer of the corporation."

First National Bank v. Ocean National Bank, (1875) 60 N. Y. 278 at 296, 19 Ann. Rep. 181.

In this action against the bank for gross negligence in losing bonds left with it for safe keeping, evidence was read of admissions of negligent conduct by the president. Held, That such admissions were not admissions of the corporation. The Court said (p. 297): "He (the president) had no incidental authority to make any declarations, binding upon the bank, in matters not within the scope of his ordinary duties, (citing Story on Agency, Sec. 115). An authority to speak and act for the corporation in respect to litigations not pending or even anticipated, cannot be presumed. As a mere declaration or admission, tending to prove the fact in issue, it was not admissible, and should have been excluded. There is no principle upon which its admission can be sustained."

Johnson v. Union Switch and Signal Co., (1892) 29 N. E. Rep. 964. No official report. Memorandum of decisions in 129 N. Y. 653.

Johnson sued for royalties under a written contract with defendant company for his services and the use of his inventions. He was discharged without cause. Upon his discharge he said to defendant's president: "Of course you will pay me the \$6500 royalty" and the president answered: "Yes, oh, yes, we shall pay the royalties." Held, the defendant was not bound to such promise. There was no proof that the president had authority to exercise the option upon the exercise of which only the royalties claimed became payable.

Merchants Nat. Bank v. Clark, (1893) 139 N. Y. 314.

In an action on a note by a bank, the bank was held not chargeable with notice of facts which came to the knowledge of its president as a director in another corporation. Gray, J., said (p. 319): "Hearsay evidence of this character is only permissible when it relates to statements by the agent which he was authorized by his principal to make, or to statements by him which constitute part of the transaction which is at issue between the parties."

Kay v. Metropolitan St. Ry. Co., (1900) 163 N. Y. 447.

Personal injuries. Statements by conductor after the accident not competent as to admissions of negligence by the company.

East Line R. R. v. Garrett, (1879) 52 Tex. 133.

Action for damages for trespass on plaintiff's land. Held, statements by directors were not competent as admissions

of defendant without proof of authority to make such statements.

It is confidently submitted to the Court that there is no proof in this case showing that the secretary and the president of the company were agents of the company in the matter of employing an attorney for the company or that they had been authorized to act by the board, or that either of them ever assumed to employ an attorney for the company, or that the company ever ratified anything either of them may have written to Hamilton regarding his claim for additional compensation, or that either of them knew that Hamilton was claiming an additional compensation when they answered his letters. (See their testimony, R. 212, 214).

That Hamilton performed services for the company in acquiring title to certain properties, and acted in an advisory capacity generally, the Appellant does not deny, but it is insisted that these services were rendered under the special contract with the general manager and accepted by the company under that contract and in no other manner and under no other arrangement, as shown by the witnesses, Rice, Dryden, Tilden and Webber and by the letter of Hamilton himself to Tilden (R. 165) in which he says, "there is also \$10,000 due myself, etc.", alluding beyond any doubt to the amount he was to receive for his services in securing titles, etc., under the contract with the general manager; although the amount in reality, was not \$10,000 but \$9500 less the \$2100 that had been paid him. The relations of Rice and Hamilton were closer, perhaps, than the relations between Hamilton and any other officer of the company, and yet it is a fact that in no letter that Hamilton ever wrote to Rice, the general manager, did he ever refer to the fact that he was claiming the additional compen-

sation referred to in his letters to the secretary and to the president of the company, with neither of whom had he ever made any contract, nor had Rice ever admitted or alluded to the fact that Hamilton was to receive any additional compensation, (see correspondence of Rice and Hamilton from p. 134 to 154, inclusive, in the record. Also R. 243, 244).

VI.

The Court erred in sustaining the opinion of the trial Court by holding in effect that Rice, the general manager, could not testify to an agreement with Hamilton in a controversy between the estate of the deceased and the company in which Rice was interested.

The general manager, Rice, testified before the referee appointed by the trial court without objections. The admission of his testimony was not objected to by Appellees until the cause came on for hearing before the trial court. The objections were based upon the following section of the Compiled Laws of 1897, of the Territory:

SECTION 3021. In a suit by or against the heirs, executors, administrators or assigns of a deceased person, an opposite or interested party to the suit shall not obtain a verdict, judgment or decision therein, on his own evidence, in respect of any matter occurring before the death of the deceased person, unless such evidence is corroborated by some other material evidence.

It will be observed that the above statute does not disqualify an interested witness, nor does it in the least affect his competency. Unlike the rule that obtains in all jurisdictions in this country except Connecticut, Massachusetts, Oregon, and perhaps Maine and Montana, New Mexico statutes do not disqualify a witness from testifying by in-

terest in suits by or against the heirs, executors, administrators or assigns of deceased persons. He may not be able to obtain a verdict, judgment or decision on his own testimony, uncorroborated by some other material evidence, either oral or documentary, but he is not a disqualified witness. "Other material evidence" has been supplied in this case. The testimony given by the general manager has been corroborated in all material essentials. The articles of incorporation of the company, its by-laws, checks that were drawn payable to Hamilton, cash that was paid to him, the deeds of C. C. Parsons and Agnes Carpenter, the agreement between E. S. Parsons and Hamilton, the letter of Hamilton to Tilden (R. 165), Hamilton's admissions to the witness I. E. Webber (R. 225), the testimony of H. B. Hamilton, Jr. (R. 177), and the testimony of both Sturgeon and Tilden (R. 211-214) neither of whom is shown to have any interest as stock-holders in the company at the time they testified, all corroborate the evidence of the general manager. So is the testimony of Dr. Dryden, another witness, who was a stockholder in the company at the time he testified, sustained and supported by the same material evidence. The trial court held, in the face of this corroborating testimony, that there was only one corroborating witness (not naming him but perhaps meaning Dr. Dryden) to Rice's testimony (R. 17), and which holding the Supreme Court of the Territory sustains. (R. 281).

The decisions holding parties in interest disqualified as witnesses, apply to very different statutes from the New Mexico statutes. But the courts, under disqualifying statutes, have not gone beyond their very letter in holding parties to suits incompetent to testify against deceased persons, as the following cases will show:

St. John v. Lofland, 5 N. D. 140.

The statute in this case provided that in suits by or against executors, etc., "neither party shall be allowed to testify for or against the other as to any transactions whatever with, or statements by, the testator or intestate." Held, that this did not include testimony that payment of a note sued on had been paid to a deceased administrator, by whose successor, as administrator, the suit was brought. Citing *Voss v. King*, 33 W. Va. 236.

Carlton v. Mays, (1875) 8 W. Va. 245.

Personal transaction with deceased partner held admissible in suit against surviving partner.

Owens v. Owens, (1878) 14 W. Va. 88 at 94.

Action against administrator for seven years' service as house-keeper for the decedent. Held, that plaintiff was not a competent witness as to what services she had rendered the deceased, that being evidence of a "transaction" with the deceased, but that the statute did not forbid testimony as to transactions with the deceased through an agent of the deceased. See also, I Wigmore on Evidence, Sec. 578, where the foregoing and some other cases are fully reviewed and discussed by the author who holds, as in his note to the 16th of Greenleaf, that the statute in question should be strictly construed.

Thayer v. El Plomo Mining Co., (1890) 4 Ill. App. 344.

Bill to enforce stock liability filed by a creditor of appellee corporation. Appellant had obtained judgment for about \$2000, for services against the company. Held, that surviving stock-holders, parties to the suit, were competent witnesses, as against deceased stock-holders. The court, by Gary, J., said: "The effect of their testimony is to charge

themselves, while it may charge the representatives of the deceased with a part of the burden, yet the preponderance of their interest is in opposition to their testimony."

Pipe v. Steel (1842) 2 Adolphus & Ellis (new series) 733.

Same case, 42 English Common Law Reports 888.

Action against two defendants on a joint contract. One of them allowed judgment to be entered against him by default. Held, that he was competent as a witness to establish the liability of his co-defendant. Because, although establishing the joint contract would throw part of the judgment upon his co-defendant, failing to establish it would release both defendants. Lord Denman said that the common law rule as to interest was based upon a fear that an interested witness would commit perjury to protect his own interest, but when in the actual situation of a given case his testimony could not benefit himself, he ought to be received.

The following section of law, as amended by the legislature of New Mexico, (Session Laws of 1901, p. 108) is in force in said Territory:

SECTION 3016. "Hereafter, in the courts of this Territory, no person offered as a witness, shall be disqualified to give evidence on account of any disqualification at common law, but any such common law disqualification may be shown for the purpose of affecting the credibility of any such witness, and for no other purpose: Provided that no person offered as a witness shall be competent to give testimony in any case who shall have been convicted and sentenced for the commission of any felony or infamous crime, un-

less he shall have been pardoned or restored to full rights of citizenship."

Under no provision of statutory law is a witness disqualified from testifying in the courts of New Mexico because of any of the common law disqualifications arising from interest. The old rule excluding from the witness stand, parties in interest, is practically obsolete.

Wigmore on Evidence, Vol. 2, Section 966.

1 Greenleaf on Evidence, 16th Ed., Sec. 328B., p. 489.

Thompson on Corporations, Vol. 2, Sec., 1952.

See also—

Barclay v. Globe Mut. Ins. Co., 26 Mo. 490.

Bredow v. Mut. Sav. Assn. 28 Mo. 181.

CONCLUSION.

For the reasons herein given upon the law and the facts in this case, it is respectfully submitted to this Honorable Court, that court below erred in holding that appellees have a lien upon the property in question for services rendered by H. B. Hamilton, deceased; in excluding and rejecting the credit of \$1000 from consideration, in the face of undisputed proof; in finding and holding that H. B. Hamilton was, and these appellees are, entitled to an additional, or double, compensation, for legal or other services rendered Appellant; in sustaining the opinion of the trial court that the general manager, Rice, never made any contract with Hamilton as to services to be rendered the company and that the general manager was powerless to make a contract with Hamilton; in holding that the company recognized or acquiesced in any employment of Hamilton by the secretary or by the president of the company; in holding that the company ratified any such employment, and that the secretary or the president of the company, had the authority to employ a general attorney for the company, either under its by-laws or otherwise; in holding that the secretary and the president of the company attempted to employ a general attorney; in accepting proof of self-serving letters of Hamilton to the officers of the company as binding on the company, especially as such letters were written to the officers not authorized to employ an attorney, or to bind the company, and which officers disclaim any intention of trying to bind the company; in holding, in effect, that the general manager of the company was an incompetent wit-

ness and on the strength of which, his testimony must have been ignored altogether respecting the contract with Hamilton as to what the latter should receive for his services and what the services were to be. The appellant contends that there was only one contract with Hamilton and that was the contract between him and the general manager of the company, and that no services were rendered by Hamilton that were not rendered under that contract. It is conceded that Hamilton was to receive \$9500 under that contract and that appellees are entitled to that amount less \$2100 paid by the company, leaving a balance of \$7400. It was conceded in the court below, and is now conceded by the Appellant that the Appellees are entitled to a judgment for that balance.

Wherefore Appellant prays that the judgment and decree of the court below, be reversed and set aside, and that the Appellant be given such other and further relief as may be deemed proper, in the premises, by this Honorable Court.

Respectfully submitted,

SAMUEL PARKER,
GEO. W. PRICHARD,
ARCH'D G. GRAHAM.

Attorneys for Appellant.

FILED.

OCT 22 1910

JAMES H. MCKENNEY,

CLERK.

SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1910.

No. 51.

EAGLE MINING AND IMPROVEMENT
COMPANY, *Appellant*,

vs.

MARY R. HAMILTON, ET AL. and
HUMPHREY B. HAMILTON, JR.,
Administrator of the Estate of
HUMPHREY B. HAMILTON, De-
ceased, *Appellees*.

BRIEF FOR APPELLEES.

JAMES G. FITCH,
Attorney for Appellees.

SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1910.

No. 51.

EAGLE MINING AND IMPROVEMENT
COMPANY, *Appellant*,

vs.

MARY R. HAMILTON, ET AL. and
HUMPHREY B. HAMILTON, JR.,
Administrator of the Estate of
HUMPHREY B. HAMILTON, De-
ceased, *Appellees*.

BRIEF FOR APPELLEES.

APPELLANT IS ATTEMPTING TO OBTAIN
IN THIS COURT A REVIEW OF THE
FINDINGS OF THE LOWER COURT UPON
DISPUTED FACTS.

Appellants Assignment of Error seems to involve some unwarranted assumptions in regard to the findings of the lower Court (record p. p. 25-28); and these unwarranted assumptions, and

some inaccurate statements both as to the rulings and findings of the Court, and as to the evidence, appear throughout Appellants' brief.

The first four assignments of error seem to be predicated entirely upon findings of fact.

The last two assignments do not appear to be based upon anything in the record.

In its brief, Appellant quotes extracts from the testimony of J. M. Rice, its manager, and insists that his version of the transactions with Judge Hamilton should be taken as true, in preference to the statements contained in the correspondence between Judge Hamilton on the one hand, and Rice, Tilden, its president, and Sturgeon, its secretary, on the other. The principal ground of complaint appears to be that the trial court did not believe Rice, but did credit the correspondence.

To sustain this position, Appellant contends that an appeal presents for review in this Court, questions of both law and fact, and that this Court will pass upon the weight or sufficiency of the evidence. It appears to have overlooked the Act of April 7, 1874, Sec. 2; (18 Stat. at L. 27), which provides that in all cases of appeal from territorial courts, instead of the evidence at large, a statement of the facts, in the nature of a special verdict, and also the rulings of the Court on the admission or rejection of evidence, when *excepted to*, shall be made and certified to by the Court below. And that this Court has repeatedly held,

both in equity and common law cases, and when, as in the present case, both common law and equitable issues are presented and tried in the lower court, the jurisdiction of this Court is limited to determining whether the facts found are sufficient to sustain the judgment rendered, and to reviewing the rulings of the Court on the admission or rejection of evidence, when exceptions have been duly taken.

Haws v. Victoria Copper Min. Co. 160 U. S. 303.

Stringfellow v. Cain, 99 U. S. 610.

Idaho & O. L. Improv. Co. v. Bradbury, 132 U. S. 509.

Mammoth Min. Co. v. Salt Lake F. & M. Co., 151 U. S. 447.

Gildersleeve v. N. M. Min. Co., 161 U. S. 577.

Salina Stock Co. v. Salina Creek Irrig. Co., 163 U. S. 118.

Harrison v. Pereea, 168 U. S. 323.

Kerrick v. Hannaman, 168 U. S. 333.

Holloway v. Dunham, 170 U. S. 615.

Naeglin v. DeCordoba, 171 U. S. 638.

Young v. Amy, 171 U. S. 179.

Simms v. Simms, 175 U. S. 162.

Marshall v. Burtis, 172 U. S. 630.

Alleged errors in the admission or rejection of evidence cannot be passed upon by this Court on appeal from a territorial Court, where this cannot

be done without examining the weight of the evidence and disregarding the facts found.

Young v. Amy, supra.

THE FACTS FOUND ARE SUFFICIENT TO SUSTAIN THE JUDGMENT RENDERED.

The Supreme Court of the Territory made no separate finding or statement of facts, but sustained the findings of the District Court, which under the rule laid down in *Stringfellow v. Cain, supra*, furnish a sufficient statement of facts for the purpose of this appeal. These findings of the trial court, with its conclusions of law, are incorporated in and immediately precede its decree and judgment (record p. p. 25-29).

There is no assignment of error that the facts so found are not sufficient to sustain the decree and judgment, nor, we submit, could such a contention be sustained.

THERE WERE NO RULINGS OF THE COURT UPON THE ADMISSION OR REJECTION OF EVIDENCE, AND CONSEQUENTLY NO EXCEPTIONS THERETO.

With the exceptions of the tax judgments brought into the record by stipulation (transcript p. 267) and the deposition of Ira P. Wetmore (transcript, p. 256), in neither of which were any objections interposed; all the evidence, oral and

documentary, was introduced before a referee at El Paso, Texas, who was appointed by consent (transcript, p. 14). His report of this evidence occupies the greater part of the record (p. p. 41 to 254). Objections were interposed by both parties to portions of this evidence, at the time of its introduction, and were noted by the referee, who did not attempt, and under our practice is not authorized, to pass upon them. Upon the evidence so taken the case was argued before the trial judge, but neither side askd for, or obtained, any ruling upon their respective objections.

The trial judge, however, some time before final hearing and judgment, filed what is styled a "memorandum opinion," (record p. 17), but without taking any action, except to appoint an examiner, whose report was afterward set aside. To this memorandum opinion Appellant filed a motion for a rehearing, which was overruled (record p. p. 22-24).

In this opinion, the trial judge says that it seems to be well settled that letters of this character (referring to the Hamilton letters) are sufficient writings to take an express trust out of the operation of the Statute of Frauds. The judge also expressed doubt as to whether Rice could testify to an agreement with the deceased in a controversy between his estate and the company in which he is interested, although the objections which were interposed by Appellees to portion of Rice's testimony were not based on that ground (transcript,

p. p. 183-184). But the opinion shows, we submit, that the trial judge, notwithstanding this doubt, read and considered Rice's testimony, and that the conclusion he arrived at, is based on his view of the weight and credibility of all the evidence introduced on both sides, without regard to any objections: This opinion forms no part of the record.

England v. Gebhardt, 112 U. S. 502.

It is merely an expression of the judge's views during the progress of the case, which may or may not have been modified at the final hearing. Whether these views are correct or not is immaterial. No error can be predicated on them here, since there are no rulings upon the admission or rejection of evidence, upon which exceptions could be based.

If we are found to be correct in the above view, there is obviously nothing further for this Court to consider: this appeal is frivolous, and we would suggest the propriety of awarding ten per cent damages in addition to interest under Rule 23.—*Gibbs v. Dickma, 131 U. S. CLXXXVI, Appx.*

And it will be unnecessary for the Court to read or consider the remaining portion of this brief, which is an attempt to answer the matters contained in the brief of Appellant, and therefore necessarily is merely a discussion of the weight and competency of the evidence upon which the findings of the trial court are based.

THE TRUST IN THIS CASE WAS AN EXPRESS TRUST.

The facts alleged in the answer of Appellees in case No. 1444 (record pp. 7-11), and their complaint in case No. 1539 (record pp. 29-33), and as found by the Court, beyond all question constituted Judge Hamilton trustee of an express trust.

We submit that Appellant also is claiming under an express trust. It is true that in its complaint in case No. 1444 (record pp. 1-3), it alleged only facts from which the law would raise a resulting trust. But Appellant in its reply to our answer in this case (record p. 3), and in its amended answer in case No. 1539 (record pp. 34-38) makes admissions which are scarcely consistent with the idea of a resulting trust. And by the testimony of Rice (record pp. 182, 183, 192, 193) it attempted to prove an express agreement with Judge Hamilton, differing only in details from that set up by Appellees. As stated in the Supreme Court of the Territory,

"That there was between the Eagle Mining & Improvement Company and Humphrey B. Hamilton a parol agreement under which he purchased the property conveyed to him by the two deeds above named is not practically in dispute between the parties, and as to most of its details they do not differ. Hamilton was to have the property deeded

to himself, he was to receive from the company \$15,000 for the purchase of it, and was to have and retain for himself the excess of that amount above what he might have to expend to obtain the property. He was, besides, to waive his claim under an agreement with one E. S. Parsons for a commission on the sale of the interest of the latter in certain property which he conveyed to the Eagle Mining & Improvement Company direct. As to other particulars of the agreement between them, the parties differ. We think, however, that the undisputed evidence proves an express rather than a resulting trust."

The details about which the parties differ are as to the extent of the consideration moving from Judge Hamilton and the terms of the trust; the Appellant claiming that he was to convey whenever required by it; the Appellees that he was to hold the legal title as security for the money admittedly due him.

In view of the admitted facts, the consideration moving from Judge Hamilton, consisting in part at least of services in acquiring this property, for which he was to receive \$15,000, less the cost of acquiring it, can the Court say he was a naked trustee, or was not entitled to hold the legal title as security for the money due him? Can his rights or duties as trustee be determined by implication or construction of law upon the admitted facts without evidence of the actual intention or independent of express agreement? We submit not. In fact, Appellant alleged and attempted to prove an express agreement by Judge Hamilton to con-

vey whenever requested, which precludes all idea of an implied or resulting trust.

It is scarcely necessary to dwell upon the essential difference between an express and an implied or resulting trust.

An express trust excludes a resulting trust.

28 Am. & Eng. Enc. Law 884.

The latter cannot arise when there is an express trust, evidenced by writing:

Leggett v. Dubois, 5 Paige Ch'y. 114.

Austice v. Burn, 6 Paige Ch'y. 448.

When there is an express agreement a resulting trust cannot arise:

Dunn v. Zwilling, 94 Iowa 233: 62 N. W. 746.

Byers v. McEniry, 117 Iowa 499: 91 N. W. 797.

Both parties, therefore, claimed and relied upon an express trust, though they differ to some extent as to the consideration and the terms: and it becomes merely a question as to the competency of the evidence offered on either side to prove its terms and conditions.

THE CORRESPONDENCE BETWEEN JUDGE HAMILTON AND APPELLANT'S OFFICERS IS COMPETENT, AND SUFFICIENT TO ESTABLISH THE TERMS OF THIS EXPRESS TRUST.

By the Statute of Frauds, express trusts must be "manifested and proved" by some writing signed by the party to be charged with the trust; and it is the uniform doctrine that such trusts need not be created in writing; that any subsequent acknowledgment by the trustee, in a memorandum or letter, is sufficient.

1 Lewin on Trusts, Ch. 5 S. 2.

1 Perry on Trusts, Sec's. 79, 80, 81, 82.

Austice v. Brown, supra.

Montague v. Hayes, 76 Mass. 609.

Urann v. Coates, 109 Mass. 581.

Kingsbury v. Burnside, 58 Ill. 310.

Moore v. Pickett, 52 Ill. 158.

But in the present case the letters are introduced by the heirs of the trustee to support their contentions as to the terms of the trust and against the contention of the *cestui que trust*. Are they admissible under such circumstances? Had Hamilton's statements been contained in memoranda not communicated to Appellant there would be force in an objection on this ground. It could be contended that Hamilton could not, with-

out the knowledge or consent of his beneficiary, alter the terms of this express trust; though it must not be lost sight of, that under the Statute of Frauds, such memoranda would furnish the sole evidence of the terms, and that without them the trust must fail.

All doubts, however, are removed when the entire correspondence between Hamilton and Appellant's officers is considered. The salient points in this correspondence are as follows:

The letter from Hamilton to Rice, of April 8, 1901 (record p. 137), written several months before the incorporation of Appellant, which seems to be merely an inquiry as to when and where the money would be paid under an agreement already made. As to Appellant, however, it may be considered as a mere offer outstanding at the date of its incorporation, and which was afterward accepted, by advancing the money to procure the deeds to Hamilton, and by accepting the benefits of the purchase.

The placing of the deed from Hamilton and wife to Appellant in escrow (record pp. 84-86), after the incorporation of Appellant, but before the deeds were obtained.

Correspondence between Rice and Hamilton (record pp. 139, 140, 142, 143), and Hamilton's letters to Tilden (record pp. 245, 246), all written between the date of incorporation and obtaining the deeds, and relating to raising money to take up these deeds.

Letter of Hamilton to Tilden (record p. 251), written immediately after these deeds had been obtained, and stating the conditions under which he is to convey to Appellant.

Correspondence between Hamilton and Tilden (record pp. 165, 166, 167, 168, 169), with Sturgeon (records pp. 129, 130, 131, 132), and with Rice (records pp. 153, 154, 136, 135), written the following year in which each of these officers acquiesced in Hamilton's statement of his right to hold the title until paid.

We have therefore the terms of this trust stated in advance of its creation, the placing of the deed in escrow, in accordance therewith; the advancement of the money to obtain the deeds to Hamilton, prompt advice to the president when the deeds were obtained, with a re-statement of the terms upon which the legal title was held; and finally the acquiescence of all three officers in the correctness of Hamilton's statements.

It is to the last only that the large number of cases cited in Appellant's brief can be intended to apply. But they are not applicable, because even that part of the correspondence relates, not to past transactions, but to the present status of the title of the Hopeful mine, or of the trust, of which Appellant was at the time taking the benefits by virtue of its possession of trust estate. The correspondence was admissible on the question of acquiescence:

Union Gold Min. Co. v. Rocky Mountain Nat'l. Bank, 96 U. S. 640.
4 Thompson on Corporations, Sec. 5228.

THE PAROL EVIDENCE OFFERED BY APPELLANT WAS INADMISSIBLE AND INCOMPETENT TO ALTER THE TERMS OF THE EXPRESS TRUST, AS ESTABLISHED BY THE CORRESPONDENCE.

This Appellant attempted to do by the testimony of Rice and Dryden (record 227). The same claim is also made for the testimony of Webber (record p. 223), but the trial court ignored Webber's testimony as not tending to prove anything in regard to the trust.

Since an express trust cannot be proved by parol evidence it necessarily follows that when such a trust has been established by competent evidence, parol evidence cannot be resorted to for the purpose of supplementing or aiding the proof furnished by written admission.

Cook v. Barr, 44 N. Y. 156.

Still less can any of its terms, as proved by the writing, be contradicted by oral evidence, as was attempted in the present case.

But there is nothing of record in this case upon which this complaint can be based. We interposed no objection to the admission of Rice's testimony on this ground. We did not contend in the lower courts that it was inadmissible for this reason, and we do not so contend here. What we did contend for there, as we do here, is that Rice's and Dryden's testimony, standing on record, uncorroborated, was not sufficient for Appellant to obtain a judgment or decision on any contraverted point.

THE EVIDENCE WAS SUFFICIENT TO WARRANT THE FINDING AS TO THE VALUE OF JUDGE HAMILTON'S SERVICES AS ATTORNEY FOR APPELLANT AND THE JUDGMENT AT LAW BASED THEREON.

The pleading of Appellees, their evidence, and the finding of the Court, are upon the *quantum meruit*.

Appellees, it is true, alleged that Judge Hamilton was to hold the legal title in the Hopeful in security for whatever might be due him on account of these services; but did not introduce any evidence in support of this allegation: and the Court, upon the evidence before it as to the extent and value of his legal services proceeded without objection, or demand for a jury trial, to make this finding and rendered judgment thereon.

The correspondence and other evidence shows that Hamilton went to Chicago at the time of the organization of Appellant, met and consulted with persons participating in it; drafted its articles of incorporation and its by-laws; and on his return home attended to all the details of its incorporation under the New Mexico laws, and thereafter to the date of his death, a period of about two years, acted as its general counsel; attended one or more meetings of its board of directors in Chicago, was frequently consulted by its officers, examined titles, prepared deeds, and attended to all Appellant's business of a legal nature. The correspondence itself shows pretty fully the nature and extent of his services.

Appellant, in contending that its manager alone had authority to employ counsel, and that its president and secretary could not bind it to pay for these services, strangely misunderstands the position of Appellees and the effect of this evidence. It is wholly immaterial who had the authority. Appellant, through all three officers, had the benefit of Judge Hamilton's services. The correspondence not only fails to show the amount of the compensation Hamilton was to receive; it shows affirmatively that such compensation was never agreed upon. Appellant calls attention to the letter of Sturgeon in which he agrees that the compensation of five thousand dollars per annum, suggested by Judge Hamilton, is reasonable enough. Sturgeon was himself a lawyer; he had,

according to his own evidence, the general charge and supervision of Appellant's affairs, and was in constant communication with Hamilton. He was therefore well qualified to form an opinion as to the value of the latter's services. Yet, in the letter he does not undertake to bind Appellant, nor do Appellees rely on his opinion as proof of the value of Hamilton's services. Their proof on this point is to be found in the testimony of Hamilton's associates—Franklin, Hawkins and Fall.

The authority of the president or secretary to retain counsel is immaterial, but we cannot forbear saying that Appellant's method of proving their lack of authority is a singular one. It consists in introducing the single section of the by-laws relating to the powers of the general manager and failing to introduce those sections treating of the powers of the president and secretary. The section introduced cannot by any stretch of imagination be construed to confer an exclusive power, or indeed any power, to employ a general attorney. The correspondence shows that Sturgeon and Tilden consulted Hamilton about matters, with which Rice, in his capacity as general manager, had nothing to do.

THE TRIAL COURT WAS WARRANTED
IN REFUSING TO BELIEVE RICE'S TESTI-
MONY.

We would not have noticed this matter had it not been for the repeated assertions throughout

Appellant's brief that Rice's testimony was uncontradicted; and upon the unwarranted assumption that he alone had authority to contract with or employ Hamilton; hence his testimony alone is competent, as to the terms of the alleged contract, and therefore, his testimony is to be taken as true.

How completely his evidence is contradicted on all disputed points by the correspondence, a careful perusal of it will show. We will call attention to but one: His testimony that Hamilton was to convey the legal title whenever he might request it, is effectually contradicted by his own letter to Hamilton, recognizing the importance of the acquisition of the legal title by Appellant, but acquiescing in Hamilton's claim of right to hold such title until paid.

We feel obliged, also, to call attention to one misstatement in Appellant's brief in regard to Rice's testimony. It is stated not only that the agreement for the purchase of the interest in the Hopeful, but also the agreement in regard to the compensation for Hamilton's legal services, was made before the incorporation of Appellant. That the former was made, or at least contemplated, before the incorporation, is shown by the correspondence. But Rice testifies (record pp. 201) that he made the agreement in regard to Hamilton's legal services several months, at least, after the incorporation. His story is in effect that a considerable period of time after the arrangement for the purchase of the half interest in the

Hopeful, including the contingent compensation to be paid therefor had been made, and several months after Hamilton has been rendering service to Appellant in the capacity of its general attorney in a variety of matters wholly unconnected with the purchase of the Hopeful, the latter, a lawyer of experience and ability, as the evidence shows, agreed to render services in the future, of large but indefinite extent; to waive, or merge, all claims for compensation for these services, past and future, in what he might make out of the purchase of the one-half interest in the Hopeful, contingent as it was upon his ability to acquire this interest for less than \$15,000, and then to make the payment of any compensation whatever subject to the further contingency, of the ultimate success of Appellant in its numerous enterprises.

We again submit that the trial judge was fully justified in the views he appears to have entertained in respect to Rice's testimony.

THE TRIAL COURT DID NOT ERR IN REJECTING CERTAIN CREDITS CLAIMED BY APPELLANT.

In their reply (record p. 39) Appellees admit that Judge Hamilton received certain payments on account for his services as attorney, and traveling expenses, stating that the total amount of

such payments is unknown to them, and call for strict proof of the same. At the trial no objection was made to any payments, shown by the correspondence, or by checks or other vouchers. The objections were confined to alleged payments, testified to by Rice alone, from a memorandum, in regard to which he offered no explanation. As to the alleged payments which were rejected by the Court, his testimony appears to be somewhat confused and contradictory. We submit that aside from the objection as to sufficiency because not corroborated under the statute, his entire testimony from the memorandum should have been rejected, and that the trial court was very liberal in allowing any payments testified to in this manner.

JAMES G. FITCH,
Attorney for Appellees.

**EAGLE MINING & IMPROVEMENT COMPANY v.
HAMILTON.****APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF
NEW MEXICO.**

No. 51. Submitted November 7, 1910.—Decided November 28, 1910.

Under the Territorial Practice Act of April 7, 1874, c. 80, 18 Stat. 27, the jurisdiction of this court on appeals is limited to the inquiry whether the findings of fact support the judgment and to a review of duly taken exceptions and rulings on admission or rejection of evidence.

Findings of the District Court when adopted by the Supreme Court of the Territory serve the purpose of the statement of facts required by the statute.

Rulings on questions of evidence are not properly before this court when the exceptions thereto do not appear in the record, and, even though objections to testimony may have been noted, if it does not appear what the rulings were and whether the testimony was or was not excluded, this court is confined to determining whether the findings support the judgment; and in this case the facts found by the court below unquestionably support the judgment.

14 N. Mex. 271, affirmed.

THE facts are stated in the opinion.

Mr. Samuel Parker, with whom *Mr. George W. Prichard* and *Mr. Archibald G. Graham* were on the brief, for appellant.

Mr. James G. Fitch for appellee.

MR. JUSTICE HUGHES delivered the opinion of the court.

This is an appeal from a decree of the Supreme Court of the Territory of New Mexico in two suits which were consolidated. The first suit was brought in August, 1903,

Opinion of the Court.

218 U. S.

in a District Court of the Territory by the appellant, Eagle Mining and Improvement Company, against the appellees, the widow and heirs of Humphrey B. Hamilton, deceased, to have it adjudged that the decedent held a certain undivided interest in mining property in trust for the appellant, and to compel conveyance. In November, 1904, the appellees, one of whom was the administrator of the decedent's estate, brought suit against the appellant, alleging that Hamilton had rendered services as its attorney in connection with the mining property and otherwise, and that the legal title had been taken by him pursuant to an agreement, by which it was to be held as security for the appellant's indebtedness to him; the appellees prayed for foreclosure and recovery of the amount found to be due. The suits were consolidated and a referee was appointed to take testimony. Hearing was had, and a decree was entered in favor of appellees, which set forth separately findings of fact and conclusions of law.

The court found that Hamilton had acquired the legal title to the undivided one-half interest in question under an agreement with the appellant, by which he was to negotiate for the purchase in its behalf and was to surrender a certain equitable claim of lien upon another interest in the property; that in consideration of this surrender and of his services in acquiring the one-half interest Hamilton was to receive the difference between an agreed sum and the amounts to be advanced by the appellant to effect the purchase; that for the payment of this difference—found to amount to \$9,500—Hamilton was to hold the legal title as security; and that the agreement to this effect was evidenced by writings signed by Hamilton "and delivered to, accepted and acquiesced in by the said company."

As a conclusion of law, the court found that the heirs of Hamilton were entitled to hold the legal title to the

undivided interest until the payment of \$9,500, with interest and costs of suit, had been made to the administrator of Hamilton's estate; that upon such payment they should convey to the appellant, and that in default of payment the undivided interest should be sold to satisfy the indebtedness.

It was further found that Hamilton had been retained by the appellant as its attorney, and at its request had rendered legal services from the date of its organization until his death without express agreement as to the amount to be paid therefor; that these services were reasonably worth \$9,519.99, upon which, after deducting payments, there was due \$8,419.99. And, as a conclusion of law, the court held that the administrator was entitled to judgment for the last-mentioned sum.

It was decreed accordingly, and from this decree appeal was taken to the Supreme Court of the Territory where it was affirmed.

The record before us contains the testimony taken before the referee, and the letters and documents which, in connection with the testimony, he submitted to the court in his report; and the argument here is directed largely to the effect of the evidence and to the findings of the court below as to matters of fact.

But we are not at liberty to review these findings of fact. We cannot go behind the findings to ascertain whether they are justified by the evidence. Under the act of April 7, 1874, chapter 80, 18 Stat. 27, the jurisdiction of this court, upon this appeal, is limited to the inquiry whether the findings of fact made by the court below support its judgment, and to a review of exceptions which have been duly taken to rulings upon the admission or rejection of evidence. *Stringfellow v. Cain*, 99 U. S. 610; *Neslin v. Wells*, 104 U. S. 428; *Idaho & Oregon Land Company v. Bradbury*, 132 U. S. 509; *Haws v. Victoria Copper Mining Company*, 160 U. S. 303; *Grayson v.*

Opinion of the Court.

218 U. S.

Lynch, 163 U. S. 468; *Bear Lake Irrigation Company v. Garland*, 164 U. S. 1; *Apache County v. Barth*, 177 U. S. 538. The findings of the District Court, having been adopted and affirmed by the Supreme Court of the Territory, serve the purpose of the statement of facts required by the statute. *Stringfellow v. Cain*, *supra*; *Neslin v. Wells*, *supra*; *Haws v. Victoria Copper Mining Company*, *supra*.

Nor are there any rulings upon questions of evidence which are properly before us for review, for no exceptions to such rulings appear in the record. When the evidence was taken before the referee appointed by the District Court various objections were made and were noted upon the record, but the referee did not attempt to pass upon the objections and reported to the court the entire proceedings, including the testimony and documents to which objection had been made. What, if any, rulings were made by the court upon these objections is not shown. In the progress of the cause a memorandum of opinion was filed by the judge sitting in the District Court, in which the admissibility of certain testimony, relied upon by the appellant, was said to be doubtful, but it does not appear that the testimony was excluded, and as we have said there are no exceptions which bring up any question for review with respect to the admission or rejection of evidence.

As the facts found by the court below unquestionably support the judgment, it is

Affirmed.